

1 IN THE DISTRICT COURT OF THE UNITED STATES
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 GROENEVELD TRANSPORT)
5 EFFICIENCY, INC.,)
6) Judge Nugent
7) Cleveland, Ohio
8)
9) Civil Action
10) Number 1:10CV702
11 LUBECORE INTERNATIONAL,)
12 INC.,)
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Defendant.

TRANSCRIPT OF PROCEEDINGS HAD BEFORE

THE HONORABLE DONALD C. NUGENT

JUDGE OF SAID COURT,

ON TUESDAY, OCTOBER 18, 2011

13 **Volume 4**

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18 Proceedings recorded by mechanical stenography; transcript
19 produced by computer-aided transcription.

Wilson - Direct

1 TUESDAY SESSION, OCTOBER 18, 2011, AT 8:56 A.M.

2 THE COURT: Good morning, ladies and
3 gentlemen.

4 THE JURY: Good morning.

08:56:58 5 MS. MICHELSON: Thank you, your Honor.

6 DIRECT EXAMINATION OF GAIL WILSON

7 BY MS. MICHELSON:

8 **Q.** Ms. Wilson, good morning. How are you today?

9 **A.** Good. Thank you.

08:56:58 10 **Q.** Before we get to your damages calculation, we started
11 on that yesterday before we broke. I'd like to ask you a
12 few other questions, and specifically about Exhibit 39.

13 Ms. Wilson, first of all, Fuel Systems, I believe the
14 testimony's been, was a Groeneveld dealer or distributor
08:56:58 15 until the third quarter of 2009. Do you recall testifying
16 to that effect?

17 **A.** Yes, that's correct.

18 **Q.** And what -- how many -- how much -- how large a volume
19 of a distributor were they for Groeneveld historically prior
08:56:58 20 to September 2009?

21 **A.** In recent history, going back to 2006, it was
22 \$975,000, and the 2009 sales were roughly \$326,000.

23 **Q.** So there -- so like a \$600,000 dip attributable to
24 the -- to the loss of FSI in that fourth quarter?

08:56:58 25 **A.** Sorry. Can you repeat that?

Wilson - Direct

1 **Q.** Yes, I will. So let me just understand. In 2008,
2 what were gross sales to FSI?

3 **A.** Okay. So I'll just summarize to give a bit of an
4 idea.

08:56:58 5 In 2007, it was \$725,000; 2008, \$425,000
6 approximately; in 2009, \$326,000.

7 **Q.** Okay. And were there any sales at all to FSI from
8 Groeneveld in 2010 or beyond?

9 **A.** No. There were no sales roughly in the fourth quarter
08:56:58 10 of 2009 onward.

11 **Q.** And about how many independent distributors or dealers
12 did -- does Groeneveld have in the United States in the --
13 in -- up until Lubecore's entry to the scene?

14 **A.** The distributor level, there were approximately eight
08:56:58 15 distributors.

16 **Q.** And in terms of sales volume, where did FSI rank among
17 those eight?

18 **A.** In the years, say, for instance, 2006, 2007, they were
19 Number 1.

08:56:58 20 **Q.** In 2008?

21 **A.** Number 2.

22 **Q.** And who was Number 1?

23 **A.** A distributor in Utah.

24 **Q.** And about what ranking were they on track to be in
08:56:58 25 2009 but for the loss in that September time period?

Wilson - Direct

1 **A.** I don't have my full data in front of me, but my best
2 recollection is that they were second, yes.

3 **Q.** Okay. Were other independent distributors lost to
4 Fuel Systems in this late 2009, 2010 time period? If I need
08:56:58 5 to rephrase my questions, you just let me know. Okay?

6 **A.** So you ask are there other distributors lost to --

7 **Q.** That Groeneveld lost to Lubecore other than Fuel
8 Systems during this time frame?

9 **A.** There were other distributors that -- or yes, there
08:56:58 10 were. There were other distributors that are now Lubecore
11 distributors.

12 **Q.** Okay.

13 And I'd like to show you what you testified to about
14 yesterday was this Exhibit 39. Thank you. And I believe
08:56:58 15 you testified that this was -- just to get us all back on
16 the same page literally, Groeneveld's sales data for EP-0
17 sales into the U.S., '05 through current, correct?

18 **A.** Yes, yes.

19 **Q.** And there -- and looking in the USA column
08:56:58 20 specifically, really across the board, there is a dip from
21 '08 to 2009. Do you see this here?

22 **A.** Yes.

23 **Q.** And what factors are those attributable to, that dip?
24 What is that attributable to?

08:56:58 25 MR. ANASTOS: Objection.

Wilson - Direct

1 THE COURT: Overruled.

2 THE WITNESS: There are many influences that
3 go into that dip. For certain, for sure, part of it is just
4 the drop in the marketplace with the hit of the lack of
08:56:58 5 financing, and the tightness in the capital markets meant
6 that some of our customers were unable to purchase systems
7 or lack of confidence, you know, just the general economic
8 downturn, and as well, missing a full quarter of the sales
9 that would have otherwise gone through our distributor Fuel
08:56:58 10 Systems and other customers that may have purchased
11 competitive product.

12 Q. Approximately what percentage of Groeneveld's total
13 EP-0 sales are attributable to the pump specifically and
14 what percentage are -- is attributable to the loose parts or
08:56:58 15 other parts and supplies, you know, the timers or the
16 metering blocks, those sorts of things?

17 A. I think the best way to sort of describe it is if we
18 sell to a distributor, a total system, which is the pump and
19 all the component parts to do the installation on the
08:56:58 20 customer's vehicle, roughly 35 percent of the total value is
21 for the pump. The rest are for the other parts, the
22 manifolds, the lines, the complete system.

23 But, on top of that, there are also sales of parts to
24 customers for regular service items.

08:56:58 25 Q. And approximately what percentage of your gross sales

Wilson - Direct

1 are attributable to those sorts of things in the course of
2 business?

3 **A.** To -- sorry. Which part, what sorts of things do you
4 mean?

08:57:41 5 **Q.** Okay. The noncomplete system sales, the parts, the
6 fittings, that sort of thing, about how much of the gross
7 sales on the EP-0 parts and pumps in -- on your Exhibit 39,
8 what is not for complete systems, but for fittings and
9 components, outside of the pump?

08:57:41 10 **A.** Okay.

11 Just to sort of clarify, because I'm not sure if I'm
12 going to be able to tell you, you know, with precision, the
13 split of sales. So we sell complete systems, and we sell
14 parts. Within a complete system, there are parts.

08:57:41 15 So roughly within an EP-0 product group, 70 percent of
16 what we sell relates to complete -- the complete solution,
17 and the rest for parts. So --

18 **Q.** Got it. I got it. Thank you. Thank you very much.

19 Now, there are -- we've obviously heard a lot about
08:57:41 20 Fuel Systems and its former relationship with Groeneveld.
21 Was that relationship still in effect, this distributorship
22 relationship with Fuel Systems still in effect when Fuel
23 Systems also started dealing with Lubecore? Were they
24 handling your product at the same time they were handling
08:57:41 25 the Lubecore?

Wilson - Direct

1 MS. ZUJKOWSKI: Objection.

2 THE COURT: Overruled.

3 THE WITNESS: Yes.

4 Q. Okay.

08:57:41 5 And now, one of -- another independent distributor
6 that works with Lubecore these days, Lubecore Florida, there
7 are some gentlemen affiliated with that distributorship that
8 also had relationships -- business relationships with
9 Groeneveld?

08:57:41 10 A. Yes, there was what we call the relationship in
11 installing dealers, that individual and his group of people.

12 Lou Boronco was an installing dealer for Groeneveld in
13 Florida, and I believe he is part of the Lubecore Florida
14 group.

08:57:41 15 Q. Okay.

16 And that belief is derived from information on the AMS
17 autolubeparts.com web site?

18 A. Yes.

19 Q. And a gentleman named Chad Cole, are you familiar with
08:57:41 20 that name?

21 A. Yes, Chad Cole was previously Groeneveld's service
22 manager in Florida.

23 Q. And I -- on another distributorship, Lubecore
24 distributorship we heard about and appears on that website,
08:57:41 25 Automated Solutions in Ohio. You've heard of that before?

Wilson - Direct

1 **A.** Yes. That was the website that we looked at
2 yesterday.

3 **Q.** And are there people involved in that distributorship,
4 Lubecore distributorship that also have connections
08:57:41 5 historically to Groeneveld?

6 **A.** The AMS is -- AMS is a former Groeneveld employee,
7 Jerome DeWeaver, listed on the AMS website. There are
8 other -- I'm not sure if they're employees or if they're
9 independent sales reps, but on the website -- for instance,
08:57:41 10 AMS has a person, Dave Fotica, in the sales department from
11 Akron, Ohio. He was previously a Groeneveld Transport
12 Efficiency employee, Butch Jennings from -- again the
13 address in Akron, Ohio, previous Groeneveld employee. And I
14 also believe that an administrative assistant that was a
08:57:41 15 former Groeneveld employee works or has worked at AMS.

16 **Q.** We've also -- there is also an additional
17 distributorship identified on this website called All Points
18 Lubrication, a gentleman Tim Anthony out of Texas. Can you
19 tell the jury the connection there, please, as well?

08:57:41 20 **A.** Yeah, Tim Anthony was a Groeneveld distributor
21 operating out of the company called Groeneveld North Texas.

22 **Q.** I'm going to show you now what we've marked as Exhibit
23 PX-103. There are some additional distributors that
24 Lubecore identifies on this list, and I'd like to take a
08:57:41 25 look and go through it and see if you recognize any names or

Wilson - Direct

1 relationships with these people as well. We talked about
2 Automated Solutions, Frank's Quality Service here in
3 Lexington, South Carolina.

4 **A.** Yeah, that is -- that is -- the company goes by a
08:57:41 5 different name. FQS is a Groeneveld distributor.

6 **Q.** Currently?

7 **A.** Currently, yes.

8 **Q.** We've talked about Fuel Systems already. Global Bound
9 out of Indian Trail, North Carolina. Is that something you
08:57:41 10 recognize?

11 **A.** I'm not familiar with that, no.

12 **Q.** And you said some of these companies go by different
13 names. What -- it goes by a different name. Can you
14 explain to the jury what you mean by this?

08:57:41 15 **A.** Well, I -- a company or a proprietor could have
16 multiple business -- businesses, business names, different
17 lines of business that they may choose to set up in
18 different legal entities or doing business as names. So
19 that's what I mean by it.

08:57:41 20 **Q.** Okay.

21 We're on this, Lubecore as Van Buren Arkansas. Does
22 that have any familiarity to you?

23 **A.** Not to me, no.

24 **Q.** Lubecore Florida, we talked about Midwest Lube out of
08:58:16 25 Elk Grove Village, Illinois. You guys have done business

Wilson - Direct

1 with anybody out of there?

2 **A.** It's familiar, but I can't put my finger on it. So I
3 couldn't say with absolute certainty.

4 **Q.** Okay. Could you know possibly the names of the people
08:58:16 5 affiliated with these companies as opposed to the business
6 names themselves?

7 **A.** Absolutely.

8 **Q.** Okay.

9 Modern Corporation, Model City, New York, does that
08:58:16 10 ring anything for you?

11 **A.** Similar to the last one, it is familiar, but I
12 can't -- unless I know the underlying people, I couldn't
13 tell you with certainty?

14 **Q.** Okay. For the next one we have here is North River
08:58:16 15 Truck, and I also have some names of some people we were
16 able to find on their website associated with that, Pamela
17 Bruchie, John Lumby?

18 MR. ANASTOS: Objection, leading.

19 MS. MICHELSON: I'm just reading some names
08:58:16 20 and asking if she --

21 THE COURT: Yeah, go ahead.

22 **Q.** A guy name Daniel Schmuck, and David -- David Schmuck.
23 Any of this familiar in terms of relationship current or
24 prior with Groeneveld?

08:58:22 25 **A.** Well currently, we have and have had for several years

Wilson - Direct

1 a relationship, distributorship with Groeneveld of Michigan,
2 and that is operated and owned by the Schmuck family.

3 Q. Okay. Smithfield Diesel?

4 A. That's in Rhode Island, and I believe that because
08:58:26 5 it's on the AMS website as well, the contact is Tony
6 Fratinelli or Anthony Fratinelli, and he was previously a
7 Groeneveld distributor as well.

8 Q. Until when about?

9 A. 2009.

08:58:26 10 Q. I'm going to -- we pulled up Midwest Lube. I'm just
11 going to read you some names and see if you recognize any of
12 these names. Doug Kolas, C-O-L-A-S or K-O-L-A-S, somebody
13 named Kruppe or K-R-U-P-P-E. Does that -- is that familiar
14 in terms of relationship with Groeneveld?

08:58:27 15 A. Not that I'm aware of.

16 Q. Okay.

17 A. No.

18 Q. And we talked about All Points Lubrication already,
19 and then the last on this list is Germany Terry Dooley out
08:58:30 20 of North Brook, Illinois. Is that somebody who has or had a
21 business relationship with Groeneveld?

22 A. He was an employee several years ago.

23 Q. So if you could just tell the jury -- I mean off the
24 top of your head, I know you can't keep everybody's name in
08:58:30 25 your head, but who -- who -- who of these people or entities

Wilson - Direct

1 had ongoing business relationships with Groeneveld up
2 through Lubecore's entry onto the scene? And my next
3 question after that is going to be and who currently has
4 ongoing business relationship with Groeneveld. So the first
08:58:33 5 one is up through I guess 2009.

6 **A.** If I refer specifically to this list, we -- FQS.

7 **Q.** And that's Frank --

8 **A.** Still currently doing business with Fuel Systems,
9 which we no longer do business with. Lubecore Florida is --
08:58:36 10 we don't do any business with those owners or affiliates
11 now.

12 Smithfield Diesel, up to around 2009. I -- perhaps a
13 few small sales in 2010 but not very significant.

14 **Q.** Okay.

08:58:36 15 **A.** But, they were Groeneveld on record, Groeneveld
16 Distributor.

17 All Points Lubrication, previously Groeneveld North
18 Texas, up to 2009, but not since. So I'm not sure if I
19 answered your question.

08:58:38 20 **Q.** I think you -- I was looking for exact, but I think
21 you gave us a good idea. So thanks very much.

22 Of the businesses, distributorships on this list which
23 is a summary prepared by a Lubecore International, Inc.
24 regarding its 2010 USA actual sales in 2011, sales
08:58:42 25 projections, what sales to people and businesses listed here

Wilson - Direct

1 would have gone through the Brunswick office if Groeneveld
2 made those sales rather than Lubecore as opposed to one of
3 the other Groeneveld offices?

4 MR. ANASTOS: Objection.

08:58:45 5 THE COURT: Overruled.

6 THE WITNESS: As I explained a little bit
7 yesterday, we have a legal entity that operates out of
8 Florida, Groeneveld Atlantic South, and one that operates
9 out of the northwest called Groeneveld Pacific West, and
08:59:05 10 they're responsible primarily for the Washington, Oregon,
11 Utah area. Everywhere else in the U.S. goes through the
12 corporate office located in Brunswick, Ohio. And that's
13 through Groeneveld Transport Efficiency, Inc. So any sales
14 other than in Florida and those north, west states and Utah
08:59:37 15 would go through the books of Groeneveld in Ohio.

16 Q. Okay. Just so I'm clear, the only -- there's no Utah
17 or --

18 A. There is Florida, Lubecore Florida. That would not go
19 through Groeneveld Transport Efficiency books.

08:59:54 20 Q. So that the only one on this list, Exhibit 103 that
21 would be going elsewhere rather than through Brunswick?

22 A. Yes, that's correct.

23 Q. Who -- are you familiar with the name John Tark?

24 A. Yes.

09:00:41 25 Q. Okay. And can you just tell the jury who he was,

Wilson - Direct

1 please?

2 **A.** John Tark was a Groeneveld Transport Efficiency
3 employee in the capacity of branch manager of the office in
4 Brunswick, Ohio.

09:01:02 5 **Q.** Do you recall approximately when the relationship
6 between Lubecore Florida and Groeneveld was terminated? I
7 mean if you don't, I'll have something that might refresh
8 your memory, but I don't want to jump the gun there.

9 MS. MICHELSON: Your Honor, can I approach the
09:01:45 10 witness and see if this refreshes her recollection?

11 THE COURT: Sure.

12 THE WITNESS: Thank you.

13 **Q.** Just read it and don't say anything about it, so.

14 **A.** Yeah, my hesitation was because I couldn't remember if
09:02:11 15 it was in early 2010 but --

16 **Q.** Well, that's my question. This is my question.

17 **A.** December, 2009.

18 **Q.** Okay. My question is -- see we have to do these with
19 technical evidentiary precision, precise wise.

09:02:25 20 Does the document I handed you refresh your
21 recollection as to when the relationship between Groeneveld
22 and Lubecore Florida terminated?

23 **A.** We didn't terminate anything with Lubecore Florida to
24 be a little more precise.

09:02:45 25 **Q.** Okay.

Wilson - Direct

4 Q. And did Groeneveld do that in writing?

09:03:01 5 A. Yes.

5 A. Yes.

6 Q. And can you just tell the jury what the reasons were
7 for that, please, as they relate to the case here today?

8 **A.** Well, it came to our attention that he was, in
9 addition to doing Groeneveld installations, he was also
0 doing work with for Lubecore.

09:03:35 10 | doing work with for Lubecore.

11 Q. I just need to run a few additional names by you to
12 see if that rings any bell, and I'll just read them. And if
13 it does, great.

09:04:34 15 facility. That's not going to be on any list you have
16 because I could not show this to you previously.

17 A. Well, I believe All Points Lubrication is a Tim
18 Anthony company in Texas.

19 Q. I'm sorry. Okay.

09:05:27 20 Ms. Wilson, we did start yesterday talking about
21 calculations that you made to figure out Groeneveld's loss
22 here from the lost sales. So I'm kind of directing your
23 attention back to that topic.

24 And I'd like to understand and have you explain to the
09:05:45 25 jury how accountants and CFO's, such as yourself, determine

Wilson - Direct

1 that amount.

2 **A.** Well, the approach is to take -- apply a factor
3 against the lost sales, the lost revenues, to determine what
4 the contribution to profit would have otherwise been, and
5 that approach, you have to take a look at, fixed versus
6 variable costs because in other words, if you didn't have
7 the sale, then you wouldn't have had the variable cost and,
8 therefore, you want to make sure that you're applying the
9 cost of that sale so that you get to a correct contribution.

09:06:54 10 So if you sold -- it if you lost \$1 in sale, it
11 doesn't mean you'll get \$1 in profit. You have to deduct
12 the variable costs that you incur to make that \$1 in sales,
13 like materials and the cost if you pay your salesperson the
14 Commission, those kinds of things.

09:07:16 15 **Q.** Yeah.

16 Can you just explain a little bit for us the
17 difference between a fixed cost and a variable cost because
18 I guess that has an impact on the amount and the
19 calculation?

09:07:30 20 **A.** Well, a fixed cost, very typical example is, you know,
21 you have a building, pay rent, that rent and obligation
22 to -- for that building is there regardless of what your
23 sales level is. So, you know, the monthly rent would be a
24 fixed cost regardless of your sales level.

09:07:53 25 **Q.** And why do the variable costs get deducted from the

Wilson - Direct

1 gross revenues? I need to understand that better.

2 **A.** Okay.

3 Let's see if I can make it simple. It's because you
4 have costs associated directly with those sales.

09:08:16 5 **Q.** With the additional products that you would have sold?

6 **A.** Yeah.

7 **Q.** But, for the loss? Okay. Go ahead.

8 **A.** So -- and very simple terms, as I mentioned, you know,
9 to sell that product, you would be incurring costs of the
09:08:33 10 materials, the transportation, the commissions, the -- all
11 the extra costs associated with making that sell. You're
12 not going to incur any extra rent costs on your building.
13 So those are why those types of costs are excluded.

14 **Q.** And we actually have a little visual aid here if I can
09:08:58 15 get this switched. So it sounds complicated, but I'd like
16 you to take a look at this formula and ask you if this
17 represents what you just described in terms of how you
18 actually make the calculation, lost sales damages equals
19 this contribution margin?

20 **A.** Right, yes.

21 So the only element that's sort of missing from here
22 is the time, but you know, the -- in the simplest form, yes,
23 to calculate a contribution margin percentage which can be
24 applied to gross revenues, this is the basic calculation.

09:09:44 25 **Q.** Okay.

Wilson - Direct

1 And so just so we read this into the record, so the
2 lost sales damages, that would be in dollar amounts?

3 **A.** Yes.

4 **Q.** And then --

09:09:58 5 **A.** Or it could be expressed as a percentage.

6 **Q.** And that's what the contribution margin is?

7 **A.** Yes. So gross revenues minus variable expenses equals
8 the actual lost dollars, and that can be expressed as a
9 percentage of the gross revenues. So in the example on
09:10:23 10 here, this is just an example. If there was \$1 million of
11 gross revenues and your contribution margin, I'm going to
12 work it a little bit backwards, it might help to explain it,
13 but on sales, after deducting your variable expenses, maybe
14 your contribution margin in this example is 40 percent, that
09:10:48 15 means that your variable expenses were 60 percent, which
16 equal \$600,000. So in this example, \$1 million minus
17 variable expenses of \$600,000 equals \$400,000. So
18 contribution margin percentage of 40 percent.

19 **Q.** Ms. Wilson, to prepare for the case for the jury
09:11:11 20 today, did you make calculations of Groeneveld's
21 contribution margin during a time -- particular time period?

22 **A.** Yes, I did.

23 **Q.** Okay.

24 And where -- let's -- we'll just -- well, tell the
09:11:29 25 jury what you did and then we'll use a piece of paper to

Wilson - Direct

1 help offer it.

2 **A.** You know, costs and structures and things change year
3 over year. So you don't want to just take one year in
4 particular. What I did was I looked at the most recent
09:11:49 5 history, rather than going way back. So I looked at the
6 2008, 2009, and 2010 profit and loss accounts of Groeneveld
7 USA, and I calculated what the -- of the average of those
8 three years of costs of materials, and the average variable
9 costs, I analyzed each of my costs and determined in my
09:12:26 10 opinion whether or not it was a variable or fixed cost, and
11 if -- and I calculated out what the total contribution
12 margin percentage would be for the lost sales. So there's a
13 lot of numbers on this page coming up, but --

14 **Q.** And this page being Exhibit 135, and it's hard to get
09:12:53 15 all of it on the screen. So if you need me to walk that up
16 to you, I'm happy -- I'm happy to do that. I have an extra
17 copy.

18 **A.** All right.

19 So this is a breakdown of some of the major costs in
09:13:08 20 our profit and loss account for Groeneveld USA. And as I
21 said, I looked at whether for purposes of this calculation,
22 an item was a fixed cost or a variable cost, and so
23 commissions over time, bonus payments, those vary, depending
24 on what the sales level is. So I calculate -- I identified
09:13:38 25 that as a variable cost.

Wilson - Direct

1 **Q.** Is that what this VC means?

2 **A.** Variable costs, yes.

3 **Q.** And does the FC, does that refer to fixed costs?

4 **A.** Fixed costs, yes.

09:13:50 5 **Q.** And so that's what this column is right here?

6 **A.** Yes.

7 **Q.** This second column. And I also see something, this
8 says MC. Can you tell the jury what you mean by that?

9 **A.** A mixed cost is -- on this schedule, I identify
09:14:06 10 traveling and representation, which is basically meals and
11 entertainment, as a mixed cost item because there's -- it
12 doesn't entirely vary with the sales of them, you know, when
13 you have a sales force that are traveling out on the road
14 and management people, you have sort of a constant level of
09:14:37 15 traveling and entertainment costs, and some of it does vary
16 but because some of it is a bit discretionary.

17 **Q.** And who prepared this document, this chart that's
18 Exhibit 135?

19 **A.** I prepared it.

09:14:54 20 **Q.** And what is the source of the information that you
21 used to prepare this information, this chart?

22 **A.** This was prepared from our accounting records.

23 **Q.** And are those historical accounting records, are
24 they -- let me withdraw the question and ask it a different
09:15:19 25 way.

Wilson - Direct

1 What kind of accounting records -- describe the
2 accounting records for the jury so they get a sense of what
3 the data was that you used to create this chart and then to
4 do the calculation that you described?

09:15:33 5 **A.** Okay.

6 Without going back to the -- in too much detail, we
7 have what we call a ERP system. So that's basically a
8 software where we can process our sales orders, purchase
9 orders, our expenses and do all the recording of the
09:15:56 10 transactions of the company inside this software package.

11 From there, we produce a set of financial statements,
12 which includes a profit and loss account, which is
13 extracting in total, not just a partial extraction, it is
14 the sum total of all of the financial transactions that we
09:16:21 15 recorded in the books, in each of those years.

16 **Q.** And the -- and when is the data input into this
17 accounting system that you described?

18 **A.** Well, everyday as the transactions happen.

19 **Q.** Okay.

09:16:36 20 And then the financial statements and the profit and
21 loss statements that you described, when are those prepared?

22 **A.** Well, we've -- we prepare our financial statements
23 every month, and we have -- you know, business review units
24 to review the results against our action plans. And then
09:16:57 25 finally, at the end of the year, there's a final set of

Wilson - Direct

1 statements that are used also for tax purposes.

2 Q. Okay. And that is done --

3 A. Exactly the same database, the same financial
4 statements.

09:17:09 5 Q. And so some of that is done daily. Some of it's
6 monthly and some of that sounds annually for tax returns and
7 that sort of thing?

8 A. Correct.

9 Q. So the 2008 data would have been completed in what
10 year? It would have been input in full in what year?

11 A. Well, the transactions would have been all for the
12 2008 up to December 31, 2008. But, then, you know, you do
13 certain journal entries, and in the month of January to
14 close out your books for approvals and other accounting
09:17:48 15 estimates to make sure that they're in accordance with
16 accounting standards.

17 Q. And do -- when does Groeneveld then close out its
18 annual books? That's a good question.

19 A. It's the 12 months ending December 31st.

20 Q. And you picked three years. Why these three years,
21 for what reason?

22 A. For me, I believe those are the most relevant years.
23 To go back any earlier, I don't believe it's relevant. It
24 would have been extra work for no relevant purpose.

09:18:35 25 Q. And when did you -- did you determine a contribution

Wilson - Direct

1 margin or the contribution percentage for each year?

2 **A.** No. As I mentioned, I average things together. So if
3 you move the schedule over --

4 **Q.** Oh, I will.

09:18:51 5 **A.** -- so that I see the right-hand side. So I did a sum
6 of those three years together to take a look at what the
7 averages were, and I you used those costs elements that I
8 identified as variable.

9 **Q.** I think if you point on that screen, if you touch it,
09:19:12 10 it lights up. And instead of me trying to fumble around --
11 there you go.

12 **A.** Okay.

13 **Q.** And I can clear it here. So that this way we can
14 follow exactly which numbers and columns you're talking
09:19:24 15 about. Continue, please.

16 **A.** So this column here is where I extracted from the
17 previous columns, the averages of the variable costs. I
18 believe I've taken a conservative approach. You'll notice
19 that the one item that I said was a variable cost, which is
09:19:52 20 our cost of sales. I have it at 52.5 percent. That's
21 correct, although our actual financial statements that are
22 variable costs were actually lower, but the reason why I
23 overrode that number, and if you could move the schedule to
24 the note section.

09:20:18 25 **Q.** I can.

Wilson - Direct

1 **A.** Thank you. As I had mentioned yesterday, we have
2 different product lines and different ways that we
3 accumulate our sales information and so in the financial
4 statements, that's the total of all of our types of sales,
09:20:40 5 and so I did a different analysis looking at what the
6 variable costs just for the EP-0 sales are, and it's -- it's
7 a little bit higher as a percentage of our total revenue
8 than some of the other product lines that we sell.

9 So if you could move back, please, to that far right
09:21:07 10 column.

11 **Q.** I sure can.

12 **A.** Thank you.

13 So again, I didn't -- I tried to, based on my
14 knowledge of the underlying data, make sure that I picked
09:21:19 15 something that was conservative and, therefore, that's why I
16 chose to put in the 52.5 percent, a higher cost base for the
17 EP-0 products than what our total average is on the
18 financial statements.

19 And then I went through and allocated some of the
09:21:43 20 variable costs, the one and a half percent, the 1.4 percent,
21 the travel, and is 2.8 percent. I'll talk about the special
22 exception there. .4 percent for technical costs, and that
23 totals up a total variable cost for our EP-0 sales of 58.7
24 percent or almost 59 percent. So for every dollar we sell,
09:22:18 25 59 percent is variable, extra costs we incur for that sale.

Wilson - Direct

1 **Q.** Why don't you talk a little bit now about this Note 2
2 that you describe as attributable to the traveling and
3 representation costs and how you categorized those.

4 **A.** In this cost bucket, accountants like to call them
09:22:46 5 cost buckets, called traveling and representation, it
6 includes all kinds of traveling expenses, whether it's an
7 airfare, car allowance, car operating expenses, hotels,
8 meals, entertainment, and with all of those elements in
9 there, my estimate is that 70 percent of those costs are
09:23:13 10 fixed. So if I was to look out at them over time, you know,
11 they're very consistent costs, and 30 percent are variable.
12 And so rather -- and that's why I said that this particular
13 item was a mixed cost. And so the number got smaller all of
14 a sudden here.

09:23:42 15 **Q.** Yeah, trying to get so the jury can see the whole
16 thing.

17 **A.** If I added up all the traveling and entertainment
18 costs in those three years, as a percentage of the total
19 sales, it's 9.3 percent, and I took 30 percent of that to be
09:23:59 20 variable, and again stated another way, we don't have the
21 sale, then you don't have the variable costs. If you do
22 have the sale, you incur an additional cost. So ultimately,
23 I estimate that the -- for every dollar, our contribution
24 margin is 41.3 percent, which is what's left over.

09:24:39 25 **Q.** Does the down turn in the economy affect the

Wilson - Direct

1 contribution margin calculation as you've described it?

2 **A.** Generally, I would say no, from an expense point of
3 view. Again, it's a -- usually, if you are concerned about
4 your cost levels, your -- what's going on in the
09:25:15 5 marketplace, you tend -- you would be reducing fixed costs.

6 That's why companies have layoffs, or, you know, maybe
7 they'll dispose of certain assets or places. They'll
8 eliminate their fixed costs. The variable costs are the
9 things that happen when sales happen and don't happen.

09:25:39 10 So --

11 **Q.** So if -- so if sales go down on a particular year,
12 then how does that affect the variable costs in that
13 particular year?

14 **A.** It's -- again, generally does not affect your variable
09:25:50 15 costs. The only exception I would say to that is --

16 **Q.** It doesn't affect your variable costs or your fixed
17 costs?

18 **A.** Doesn't affect the variable cost percentage.

19 **Q.** Oh, okay. Thank you.

20 **A.** It doesn't affect my 41.3 percent or the contribution
21 margin. The only exception I would say to that is if, in
22 fact, you really wanted to aggressively price your product
23 and try to sell more through selling it for, you know, a
24 lower selling price, then, of course, your percentage of
09:26:34 25 your material costs would go up. And so if you have again,

Wilson - Direct

1 trying to use some very simple math, if something costs you
2 50 cents in materials to make and you sell it for a dollar,
3 then your variable cost is 50 percent. If you sell that
4 same item for 75 cents instead of a dollar, the material
09:27:10 5 cost is still 50 cents, but as a percentage, this is where I
6 have to get my calculator, all of a sudden, your variable
7 costs go up to 67 percent. So you have to be a bit careful
8 when you're talking about percentages.

9 **Q.** And were you careful when you put together these --
09:27:37 10 this chart and these numbers to figure out and the average
11 contribution margin and variable costs for Groeneveld in the
12 last number of years?

13 **A.** Yes.

14 **Q.** Okay. And I mean -- you have an average on this chart
09:27:53 15 of the 41.3 percent, but you actually could figure out the
16 contribution margin in each year from the data in this
17 document, Exhibit 135, correct?

18 **A.** I could, yes.

19 **Q.** And which -- so for 2008, as an example, what -- what
09:28:17 20 would be -- what would be the gross revenues that would be
21 in this first part of the formula that you'd stick in there?

22 **A.** \$8,921,231.

23 **Q.** And the variable costs, that would be, one, two,
24 three, four, and then a -- that 30 percent, that's 70
09:28:52 25 percent of this figure?

Wilson - Direct

1 **A.** Correct.

2 **Q.** And the total of that would be here?

3 **A.** Correct.

4 **Q.** Was there any --

09:29:02 5 **A.** I do want to --

6 **Q.** Sorry. Go ahead.

7 **A.** I want to clarify one thing though because for
8 purposes of this calculation, the lost sales, the sales that
9 we lost through Lubecore is -- how can I say this? To me,
09:29:38 10 those are incremental or in addition. Wouldn't have had --
11 it wouldn't have had an impact in itself by itself on the
12 fixed costs. The reason why I say that is the -- we
13 wouldn't have hired extra accountants. We wouldn't have had
14 a bigger building. We wouldn't have hired extra sales
09:30:08 15 people for those sales that we had the capacity to make. So
16 the reason why I bring that up is when you ask me about
17 specifically 2008, and what that had to plug the numbers in,
18 the -- let's see. How can I explain this? I think you have
19 to look at things within a relevant range and a relevant
09:30:45 20 time period. So to go through and calculate it out in 2008
21 and 2009 and 2010, there is going to be some minor variation
22 between those years.

23 **Q.** Yes.

24 **A.** But, for purposes of -- specifically of calculating
09:31:04 25 the lost sales, the damages that we incurred, I looked at it

Wilson - Direct

1 on a three-year basis. So I'm not sure that it's relevant
2 to go through each of these years and calculate it out that
3 way.

4 **Q.** I understand and I guess my question is that you --
09:31:22 5 you could do it annually to see if there was any kind of
6 wide swing in any particular -- in any particular one of the
7 three years that is way out of whack with the 41.3 percent
8 that you come up with as the average contribution margin,
9 correct?

09:31:43 10 **A.** Sure, yes.

11 **Q.** Okay.

12 And is any one of those years widely out of whack with
13 that average contribution margin? If you need to go use
14 your calculator and -- to answer that question, that's fine.

09:32:05 15 **A.** I didn't hear a question. Sorry.

16 **Q.** Is it -- is the contribution margin in any one year
17 significantly different from the three-year average that you
18 have here on this piece of paper, Exhibit 135?

19 **A.** It would be helpful if I could have the whole piece of
09:32:28 20 paper in front of me. If that's possible.

21 **Q.** It is possible.

22 **A.** Thank you.

23 Well, if we want to go through these one by one, if it
24 helps, I don't know if we -- I'll look at the variable costs
09:33:10 25 for commissions, overtime bonus, the average is 1.5, and the

Wilson - Direct

1 range in 2009 was 14 up to 2008 of 1.7 -- a reason for that
2 is not all sales have the same percentage of commission for
3 instance. So that can really depend on what your sales mix
4 is. The staff costs an average 1.4, a big range, .5 in 2009
09:33:47 5 up to a high of 2.2 in 2010, and that staff cost include
6 things like uniforms and temporary workers, that kind of
7 thing. So it's a little bit discretionary or, you know, we
8 have some influence of how much we would spend there. And
9 that's why there's a range. Technical costs, fair -- very
09:34:19 10 consistent. Those are the -- the costs, tools, and things
11 that we use. Let's see.

12 Q. I'm sorry. I didn't know you still -- I was reading
13 the document. Okay. I also see that your calculation of
14 the contribution margin of the 41.3 percent, that that is
09:35:00 15 for Groeneveld USA. Is there -- is there -- is that
16 consistent across -- is that contribution margin consistent
17 for the -- all the U.S. offices as opposed to the
18 Plaintiff's offices, or can you just explain to the jury a
19 little bit about that? Maybe I could ask my question a
09:35:30 20 little better. Is there a significant difference between a
21 contribution margin, specifically for the Brunswick office
22 as opposed to the U.S. offices?

23 A. No significant difference. No significant
24 differences.

09:35:51 25 Q. Okay. So to calculate -- and I want to understand

Wilson - Direct

1 this. So is contribution margin net profit or what -- what
2 is -- what are you -- what are those lost sales damages?

3 MR. ANASTOS: Objection.

4 THE COURT: Overruled.

09:36:12 5 THE WITNESS: I kind of feel like you asked me
6 two questions.

7 **Q.** I probably did, which shows my noviceness at the
8 subject, but I want to understand what amount -- why these
9 are lost sale damages, and if they include only net profit
09:36:38 10 or if it's broader than that?

11 **A.** Well, this looked at our costs. There's no -- nothing
12 in here which is kind of an opportunity costs. There are no
13 other costs that have been added.

14 **Q.** Um-hum.

09:37:06 15 **A.** Or included in here to influence the percentage. So
16 that --

17 **Q.** I think my question wasn't so good because you look a
18 little confused. So let me think of how I can restate it.
19 Okay?

09:37:29 20 After you have your gross revenues and after you take
21 your variable costs out of it, and once you actually do the
22 calculation of what the number amount is, is that number
23 only net profit or is that money used to do other things?

24 **A.** Well, I think in this example, that was at the bottom
09:38:00 25 of the page here, if -- if we lost -- if we did not get \$1

Wilson - Direct

1 million of sales, then we would have had \$400,000 less cash
2 in the bank. I don't know if that helps to make it more
3 clear.

4 **Q.** It does for me. Thank you.

09:38:20 5 So what -- so to determine and calculate Groeneveld's
6 lost sales damages using this 41.3 percent contribution
7 margin on the lost sales to Lubecore, what information do
8 you need for each category here, the gross sales revenues.
9 Let's start there. What number do you need to plug in to
09:38:51 10 figure out Groeneveld's lost sales damages?

11 **A.** Well, I would use the Lubecore revenue as -- with the
12 exception of anything that they had in Florida, Seattle,
13 Oregon, Utah, which I believe on the list, we only
14 identified Florida. So those sales would have otherwise
09:39:17 15 been sales that went through Groeneveld Transport
16 Efficiency, and times 41.3 percent would be our lost
17 contribution margin in dollars, lost cash.

18 **Q.** And the money you would have put in Groeneveld's
19 pocket but for the loss of those sales?

09:39:42 20 **A.** Correct.

21 **Q.** So let's -- you'll notice that we don't -- we don't
22 have the 2009 information on the U.S. -- the U.S. Lubecore
23 EP-0 sales on this document, Exhibit 103, but we -- I'd like
24 you -- there's been testimony that there were 200 ALS EP-0
09:40:17 25 systems that was sold in the U.S. by Lubecore. Can you

Wilson - Direct

1 determine what Groeneveld's lost sales damages are based on
2 those 200 systems, those 200 sales?

3 MR. ANASTOS: Objection.

4 THE COURT: Overruled.

09:40:40 5 THE WITNESS: The sales going through a
6 distributor, 200 units, the average selling price of those
7 units would be approximately \$1500 per. So the total
8 revenue of 200 times \$1500 each would be \$300,000 of revenue
9 that we would have otherwise had, times the contribution
09:41:13 10 margin of 41.3 is \$123,900.

11 Q. Now, let me ask you this. You just said if -- the
12 \$1500 per unit price is what is approximately what
13 Groeneveld earns when you sell the product to the
14 distributor?

09:41:38 15 A. Yes.

16 Q. Is there a different selling price when Groeneveld
17 sells it directly to an end user?

18 A. Yes, and I think the simplest way to explain that is
19 the notion of a wholesale versus retail price. So, you
09:41:59 20 know, if I'm going to -- the ultimate end customer is going
21 to pay \$1, then if I'm selling that through a partner like a
22 distributor, and he is then selling it on to the end user,
23 then I'm going to sell it to the distributor for less and
24 then the distributor sells it on to the end user. If I have
09:42:25 25 a relationship with that end user directly, I'm going to

Wilson - Direct

1 charge him more, maybe \$1.25.

2 Q. And so what's the average selling price of a unit of
3 an EP-0 single-line system to the end user?

4 A. I'm not sure if -- it can -- it can vary, depending on
09:42:49 5 the application. So say it's roughly a 30 to 35 greasing
6 point system sold for a tractor.

7 Q. Well, I'm going to -- and I'm going to not ask -- a
8 tractor meaning a tractor like in a --

9 A. A truck. Would be, sorry, to the end user, roughly
09:43:14 10 \$2500.

11 Q. Is it different for a trailer if you sell a
12 single-line to put on a trailer, or do you charge different
13 for the same system?

14 A. Yes. Again, it's about how that system is configured.

09:43:29 15 Q. Um-hum.

16 A. How many points, how many material -- like in addition
17 to the pump, there are all the other things that carry the
18 grease to the greasing point.

19 Q. Right.

09:43:41 20 A. So if there is, you know, fewer greasing points,
21 there's less material to put the total system together. So
22 naturally, it's going to be cheaper if it's fewer things to
23 grease.

24 Q. So it's -- it's a bit cheap -- it's less expensive
09:44:00 25 with the trailer than it is with the truck?

Wilson - Direct

1 **A.** Yes.

2 **Q.** The truck is about a 2500-unit and what's a trailer
3 about?

4 **A.** I can't give you, you know, a good example of that.
09:44:17 5 There's such a wide variety of trailers. So --

6 **Q.** Is it less than 2000?

7 **A.** Yes.

8 **Q.** How much less? What's a fair enough --

9 **A.** It really -- because we have other products like the
09:44:36 10 Compalube product I mentioned yesterday, that may be a more
11 appropriate product. We wouldn't necessarily put an EP-0
12 pump on a trailer. So I'm not sure that I'm making myself
13 clear.

14 **Q.** Oh, you are. I think is your point basically that the
09:44:57 15 sales price to the end user is going to be higher than the
16 1500 per unit price you mentioned to the distributor?

17 **A.** Yes.

18 **Q.** Okay.

19 So moving now to 2010, we have Lubecore projections
09:45:18 20 here of a total sale of the \$1,042 -- \$1,042,088.01. Are
21 you with me?

22 **A.** Yes.

23 **Q.** And now if we take out Lubecore Florida, \$657.67, what
24 are we -- what are you left with?

09:45:54 25 **A.** \$890,000 roughly.

Wilson - Direct

1 **Q.** \$890,000, an estimate. And so what -- what are
2 Groeneveld's lost sales on that number, applying 41.3
3 percent contribution margin?

4 **A.** \$367,000.

09:46:16 5 **Q.** \$367,000.

6 And now on this Lubecore document, we have 2011 sales
7 of the \$2,084,176.01, and again, if we take out the Lubecore
8 Florida, what are you left with there, approximately, as to
9 gross sales?

09:46:45 10 **A.** \$1,779,000.

11 **Q.** \$1,779,000. And then you apply your contribution
12 margin that you've described and you've got a loss in 2011
13 of how much?

14 **A.** \$734,727.

09:47:08 15 **Q.** 727.

16 And why -- why are Lubecore's sales numbers, meaning
17 their gross revenues attributable to those sales, the
18 relevant number to figure out what Groeneveld's gross
19 revenues on those sales would have been if Groeneveld was
20 selling, if Groeneveld got the sale?

21 **A.** Pardon? I didn't hear the last part. I didn't hear
22 your last comment.

23 **Q.** If Groeneveld got the sale instead of it going to
24 Lubecore --

09:47:57 25 **A.** Okay.

Wilson - Direct

1 Q. Why -- why do you -- why do we plug in, why do you
2 plug in Lubecore's gross revenues on those sales as part of
3 the lost damages calculation?

4 | A. Right.

09:48:10 5 MR. ANASTOS: Objection.

6 THE COURT: Overruled.

THE WITNESS: Okay. So you know, there's a few things that I can comment on with that question. I'd like to start with generally, the price that we would charge to customers would be, you know, relatively similar to what I believe Lubecore would charge to customers. So it's not -- so I would use their number because they're selling prices to their distributors from what's very likely to be similar to what the market price is in the marketplace.

That's -- so those numbers would be -- I forgot about the number of units. The total revenues would be similar to those same customers. And those are -- so I'm not sure if that answers part of the question or --

19 Q. I think it does. I was seeing if you have more to
09:49:25 20 add.

21 Now, we obviously don't have figures for 2012 and
22 moving into the future on this chart. What period of time
23 in the future is Groeneveld no longer going to be harmed,
24 going to be damaged if Lubecore continues to sell its
09:49:56 25 product? When does the market recover for Groeneveld?

Wilson - Direct

1 MR. ANASTOS: Objection.

2 THE COURT: Overruled.

3 BY MS. MICHELSON:

4 Q. You can answer.

09:50:08 5 A. What I can tell you as our own experience in -- when
6 you hire a new distributor to sell your products, there is a
7 learning curve for that distributor, Number 1. And then
8 that distributor has to go out into their territory and make
9 sales propositions to customers that -- to customers. And
09:50:45 10 so when you appoint a new distributor, you know, they're
11 going to start slowly and probably be fully sort of
12 competent to work on their own in their exclusive territory,
13 dealing directly with the end user customers, being totally
14 comfortable with the Groeneveld selling proposition in
09:51:13 15 approximately five years.

16 Q. And, Ms. Wilson, do you -- do you base that -- base
17 that estimate on your experience in this industry?

18 A. Yes, it would only be this industry.

19 Q. Now, you were asked to gather up some -- Groeneveld's
09:51:47 20 financial information to provide to an economist. Do you
21 recall being asked to do that?

22 A. Yes.

23 Q. Okay.

24 And what kind of information did you gather to provide
09:51:59 25 to the economist, John Burke?

Wilson - Direct

1 **A.** I just provided all of the financial statement
2 reports, financial reports for all of the U.S. entities for
3 2005 onward. So including the Groeneveld Atlantic South,
4 Groeneveld Pacific West, Groeneveld Transport Efficiency,
09:52:33 5 total USA, everything that I have, I gave them included all
6 kinds of details on expenses and sales.

7 **Q.** Okay. And I'm just going to show you this and ask you
8 to tell the jury -- we've marked this disk and it takes a
9 while to focus this CD, Exhibit 125, PX-125. And can you
09:53:06 10 just explain what's on here, and why it's in this format?

11 **A.** Well, it's in this format because there is a lot of
12 data, for all these years, all the legal entities. So
13 it's -- Excel spread sheets and saved to the CD.

14 **Q.** Okay. And that's what this Exhibit is, PX-125, all
09:53:34 15 that data you just described?

16 **A.** Yes.

17 **Q.** Just give -- oh, you know, you said something. You
18 said way back when, that your figures were conservative,
19 that you were trying to be conservative in some way. Can
09:53:48 20 you just explain how you were conservative and why you were
21 being conservative?

22 **A.** Well, as I mentioned before, maybe conservative in
23 trying to be a bit precise and looking at to what I believe
24 to be relevant, and that's why as an example, I didn't think
09:54:20 25 it was -- although the average variable selling costs or

Wilson - Direct

1 cost of sales in 2008 through to 2010 was 49 percent, which
2 was sort of right there, you know, I did look deeper into
3 the details and I made sure that I -- you know was very
4 specific about the EP-0 product group. That's what I mean
09:54:54 5 by conservative. I think, you know, looking at a range of
6 data, averaging it out instead of just sort of cherry
7 picking what the best number is, I guess, and our variable
8 costs, you know, were only a half percent in 2009 for staff
9 costs and if I had to just pick that, this number would have
09:55:29 10 been more favorable for me, but that's why I took the three
11 years and I averaged it out. So that's what I mean by
12 conservative.

13 **Q.** And I'd just like you finally to add up these three
14 numbers for -- that you've calculated with us, while on the
09:55:50 15 stand for the lost sales in 2009, 2010, and then 2011. I
16 believe the number you came up with in 2009, based on those
17 200 units, is the \$123,900?

18 **A.** Correct.

19 **Q.** And that's reflected on Exhibit 135 here, correct?

09:56:16 20 **A.** Yes.

21 **Q.** And then I was kind of taking notes on these things as
22 we went along. On Exhibit 103, your calculations for 2010
23 led to a \$367,000 loss to Groeneveld. And then finally, in
24 2011, your number is \$734,727. And can you just tell the
09:56:44 25 jury, please, what that total number is in terms of the lost

Wilson - Cross

1 sales damages to Groeneveld?

2 **A.** The contribution margin on the sales lost was over the
3 three-year period is \$1,225,627.

4 **Q.** 627?

09:57:05 5 **A.** Correct.

6 MS. MICHELSON: I have no further questions of
7 this witness. Thank you very much.

8 THE COURT: Thank you. You may cross-examine.

9 CROSS-EXAMINATION OF GAIL WILSON

09:57:23 10 BY MS. ZUJKOWSKI:

11 **Q.** Good morning, Ms. Wilson. I just want to start by
12 quickly verifying a few matters with respect to Groeneveld's
13 corporate structure here in North America. Several
14 different entities have come up through the course of your
09:58:06 15 testimony, and there really is only one Plaintiff here.

16 First, there's CPL Systems Canada, Groeneveld CPL
17 which serves Canada, right?

18 **A.** Correct.

19 **Q.** And that's the entity for which you're the chief
09:58:19 20 financial officer?

21 **A.** Yes.

22 **Q.** Okay. CPL sells Groeneveld products to three entities
23 in the U.S.; is that correct?

24 **A.** Yes.

09:58:28 25 **Q.** Okay. One of them is the Plaintiff in this case,

Wilson - Cross

1 Groeneveld Transport Efficiency, right?

2 **A.** Yes.

3 **Q.** And then there's Groeneveld Pacific West?

4 **A.** Correct.

09:58:39 5 **Q.** And the third is Groeneveld Atlantic South?

6 **A.** Correct.

7 **Q.** Essentially all three of these subsidiaries do the
8 same thing, except that Groeneveld Transport Efficiency is
9 responsible for sales to fleets and national accounts; is
09:58:51 10 that correct?

11 **A.** Yes.

12 **Q.** Okay. All right.

13 Let's take a look at Groeneveld's website. If you
14 could pull that up, please, David.

09:59:10 15 And I think -- your Honor, is it -- there's been some
16 testimony about the pump that's at issue in this lawsuit
17 being Groeneveld flagship pump. I think you even referred
18 to it as iconic yesterday.

19 There's been some suggestion that this pump somehow
09:59:35 20 embodies Groeneveld's brand or image; is that correct?

21 **A.** Sorry. I didn't hear what you -- it somehow --

22 **Q.** Embodies Groeneveld's brand or image?

23 **A.** Yes.

24 **Q.** But, just to be clear, there's no picture of this pump
09:59:49 25 on Groeneveld's current home page, is there, what you've got

Wilson - Cross

1 up here on the screen?

2 **A.** Yes, I'm just watching all the flashes. On the -- on
3 one flash, there was -- you could tell there were pumps on
4 the table or on the display, but a single shot on that home
10:00:26 5 page, no.

6 **Q.** So there's a flashing display of photographs of
7 products. And somewhere in there, there's at least some of
8 your pumps?

9 **A.** Correct.

10:00:33 10 **Q.** Iconic flagship pump is not iconically displayed on
11 the home page, though, is it?

12 **A.** Correct.

13 **Q.** David, if you could click on products and solutions,
14 please, and then on automated greasing systems.

10:00:52 15 Even when you do that, go through Groeneveld's website
16 to the page where its automated greasing systems are
17 featured, we still don't see this so-called iconic or
18 flagship pump particularly prominently displayed, do we?

19 **A.** Well, I believe it's that one right there.

10:01:09 20 **Q.** Sure, it's one of six pumps that are listed that
21 Groeneveld carries, right?

22 **A.** Correct.

23 **Q.** And up at the top, actually the more prominently
24 featured pumps are actually these square shaped -- are they
10:01:24 25 TW-34 pumps? It's a different pump, though, that's

Wilson - Cross

1 displayed in a larger featured space on that page?

2 **A.** In the banner on that page, yes. It's different
3 products shown, below which also comes up on the main page.
4 I mean you didn't have to click anything extra. Our
10:01:47 5 single-line pump, you know, was positioned first, in the
6 lineup.

7 **Q.** The six pumps?

8 **A.** Pardon?

9 **Q.** Thank you. I see it there with the other six pumps,
10:01:57 10 right?

11 **A.** Correct.

12 **Q.** There's been testimony from you and your colleagues
13 that Groeneveld sold this EP-0 pump, has been trying to
14 build an image around it for 30 years. I think Mr. Van der
10:02:08 15 Hulst testified he was part of the team that engineered it
16 in 1981 or at least the early 80's; is that correct?

17 **A.** Yes.

18 **Q.** That's not really, is it?

19 **A.** Not really what?

20 **Q.** Not really correct, is it? Do you recognize this
21 version --

22 THE COURT: Excuse me.

23 **Q.** Do you recognize this version of the Groeneveld EP-0
24 pump?

10:03:14 25 **A.** Pardon. Sorry?

Wilson - Cross

1 **Q.** Do you recognize this version of the Groeneveld EP-0
2 pump?

3 **A.** Do I recognize it? I -- you know, I know that it was
4 the Groeneveld pump. You're going to ask me what era or,
10:03:34 5 you know, the dates, I'm not able to answer that.

6 **Q.** Well, isn't it true that this is the version of the
7 pump that Groeneveld was actually selling in the 80's and
8 even into the early 90's?

9 MS. MICHELSON: Objection.

10:03:46 10 THE COURT: Overruled.

11 THE WITNESS: I believe you'd have to ask one
12 of the technical colleagues about that.

13 **Q.** You testified earlier about the employment history of
14 Martin Vermeulen. You had records that showed that he came
10:04:03 15 to Groeneveld in approximately November, precisely I guess
16 November of 1986; is that correct?

17 **A.** Correct.

18 **Q.** Wasn't it actually Martin Vermeulen who engineered
19 this new version at that time in the late 80's and van der
10:04:21 20 Hulst who engineered this older version that Groeneveld was
21 selling in the 80's and into the 90?

22 **A.** I believe you would have to pose that question to them
23 specifically.

24 **Q.** Do you deny Martin Vermeulen was the head of research
10:04:38 25 and development in the late 80's at Groeneveld?

Wilson - Cross

1 **A.** Yes.

2 **Q.** You checked his employment records, you had him, I
3 think, in front of you the other day. What did they show
4 you? What do they say his job title was?

10:04:50 5 **A.** Pardon? The employment record?

6 **Q.** Yeah. You referenced it yesterday. Isn't that what
7 you consulted to read off his specific dates of employment?

8 **A.** Yes.

9 **Q.** Do you have that record? Does it happen to show a job
10:05:12 10 title?

11 **A.** I don't recall if that particular record had a job
12 title or if it was just an employee listing.

13 **Q.** Do you still have it?

14 **A.** I do not have it with me here.

10:05:27 15 **Q.** Okay. All right. Fair enough.

16 By the way, could we switch to the Elmo from the
17 website link? Doesn't this version of Groeneveld's pump
18 that was being sold throughout the 80's and into the early
19 90's by Groeneveld look a whole lot more like the Bijur pump
20 we've been looking at the last couple days?

21 MS. MICHELSON: Objection.

22 THE COURT: Overruled.

23 MS. MICHELSON: It's in the --

24 THE COURT: Overruled.

10:06:01 25 THE WITNESS: I mean I -- it's got a housing

Wilson - Cross

1 and has a reservoir, but you know, I can't tell from that
2 picture about the, you know, the dimensions. If it's that
3 big or that big. So I'm not quite sure, you know, what you
4 want me to say. I don't think they're exactly the same, no.

10:06:21 5 Q. Certainly the pump you're looking at up there on the
6 witness stand is more similar to the Bijur pump than the
7 Groeneveld pump, the subject of this litigation?

8 A. I don't know what vintage that Bijur pump is and as I
9 said, I'm not -- I wasn't familiar with what vintage this
10 pump is.

11 Q. We can all draw our own inferences from the images, I
12 guess.

13 I'm going to take a look now at PX-20 and I just want
14 to be conscientious. I'm not sure that this has been waived
10:06:52 15 or something. It was used yesterday, but it was marked
16 highly confidential. I don't want to get in trouble for
17 using it.

18 MS. MICHELSON: It's her document, so.

19 MS. ZUJKOWSKI: Okay, because of the presence.

10:07:01 20 MS. MICHELSON: We're using these documents in
21 court. I guess we can talk about your concern.

22 MS. ZUJKOWSKI: I just wanted to make sure you
23 wouldn't be mad before I put it up here, Debbie. Thank you.
24 Appreciate that.

10:07:15 25 MS. MICHELSON: Did you say 20?

Wilson - Cross

1 MS. ZUJOWSKI: Yeah.

2 MS. MICHELSON: Thanks.

3 Q. This is a table of Groeneveld's advertising promotion
4 trade show cost and you went through this briefly yesterday.
10:07:35 5 I'll try to be quick with it.

6 Does this summary cost relate to all products that
7 Groeneveld sells in North America or just EP-0 pumps at
8 issue in this case?

9 A. No, it's all products.

10:07:49 10 Q. All of them?

11 A. Yes.

12 Q. Okay.

13 And in the top left-hand corner, we talked about this
14 yesterday, but you're assuming that one Canadian dollar
10:07:58 15 equals one U.S. dollar, right?

16 A. Correct.

17 Q. You acknowledged that yesterday, that the exchange
18 rates fluctuated, but I think you said it was in a
19 nonmaterial way. That's not really true either, is it?

10:08:47 20 This chart I'm showing you I pulled it off the
21 Internet, just showing foreign currency compared to the
22 Canadian dollars since 1948. And if I could draw your
23 attention to the bottom left-hand corner. We're talking
24 about the years that are in question here. It's really not
10:09:10 25 that close one-to-one if you look at it. The numbers are

Wilson - Cross

1 kind of a bit off, aren't they?

2 **A.** Right. If you go back to the Exhibit, the -- this was
3 really for illustrative purposes over time, what the total
4 spending in North America was, if -- let me see if I have --
10:09:49 5 I do have that schedule here, too, which would be easier to
6 read. So the -- so where some of the costs were incurred in
7 Canada, yes, a different exchange rate could be applied to
8 come up with a total number so that the numbers aren't
9 mixed. But, really, this is just -- to get a sense for the
10:10:21 10 spending. So in the U.S., in Canada, there's significant
11 spending over that period of time.

12 **Q.** Sure. Okay. I just wanted to make sure we were --
13 knew the significance behind the numbers that we're looking
14 at here. You know, you said there's significant spending,
10:10:39 15 but again, you agree the numbers in this document reflect
16 advertising promotion and trade show costs incurred by all
17 three of the U.S. subsidiaries, right?

18 **A.** Correct.

19 **Q.** Not just the one that's the Plaintiff in this lawsuit?

20 **A.** Correct. This is to illustrate that we're serious
21 about advertising in North America.

22 **Q.** Actually, none of these numbers relate directly just
23 to Groeneveld Transport Efficiency, Inc.?

24 **A.** Well, the number is the total of U.S. spending, yes.
10:11:11 25 That includes all of our locations and the total in Canada.

Wilson - Cross

1 So yes, you're correct. There's no specific line that shows
2 just Groeneveld Transport Efficiency.

3 Q. Am I also correct to say that none of these costs are
4 limited to the EP-0 pump that's at issue in this litigation?

10:11:31 5 A. Correct. As you've already asked, this is the total
6 spending for all promotional advertising commercial costs,
7 as we call it. So for all our product lines, for all of our
8 U.S. locations.

9 Q. Thank you.

10:11:51 10 You acknowledge yesterday that Groeneveld cut
11 promotional and advertising costs in 2009, right?

12 A. Correct.

13 Q. And that was because Groeneveld was basically watching
14 costs like everyone else as a result of the economic turn
15 down?

16 A. Correct.

17 Q. The drops weren't very small, though. They were -- in
18 fact the exhibition costs fell almost 90 percent from 2008
19 to 2009?

10:12:15 20 A. Correct.

21 Q. And is it your testimony that these drops in
22 promotional costs had no impact whatsoever on Groeneveld's
23 subsequent sales numbers that year or in the years that
24 followed?

10:12:29 25 A. No. I don't believe I said that.

Wilson - Cross

1 **Q.** I think that's what you testified at the preliminary
2 injunction hearing but -- so are you acknowledging today
3 then that the Groeneveld decision to invest less money in
4 advertising and promotional costs probably did have an
10:12:48 5 impact on its sales numbers?

6 **A.** I mean there's always a possibility. It has an
7 impact.

8 I believe at the preliminary injunction when I was
9 asked was isn't that the reason why your sales were down in
10:13:00 10 2009 specifically. And I don't think with a program which
11 spans many years as worldwide as -- you know, where you can
12 take some efforts and one particular year and specifically
13 attribute it to another specific year, I think, you know, in
14 cumulative effect, we've been predominant at trade shows
10:13:26 15 over the years, and one -- you know, reduction in those
16 shows in 2009 may not have a direct impact on the immediate
17 sales thereafter.

18 **Q.** But, it very well may, and if not that year in 2010,
19 in 2011, it's common sense that it -- it may?

10:13:52 20 **A.** Sure, I can agree with that. It may.

21 **Q.** Thank you very much.

22 Let's now look at PX-39. You agree with me the sales
23 revenue figures in the column are sum again of all U.S.
24 business not Groeneveld broken down between the three
10:14:18 25 entities, not focused on the Plaintiff at issue in this

Wilson - Cross

1 litigation?

2 **A.** That's correct.

3 **Q.** And here again, sales decline from '07 to '08 by \$1
4 million?

10:14:33 5 **A.** Yes.

6 **Q.** By about \$1.6 million from '08 to 2009?

7 **A.** Correct.

8 **Q.** And I think I've acknowledged these declines were
9 really impacted or heavily influenced by economic conditions
10 in the U.S. and specifically the transportation industry?

11 **A.** Yes.

12 **Q.** Okay. You certainly would have no way to really know
13 or to suggest the way you've been doing in the last two days
14 that Lubecore's presence in the market has any causal
15 relationship with these sales declines, do you?

16 MS. MICHELSON: Objection.

17 THE COURT: Overruled.

18 THE WITNESS: Well, I certainly believe that
19 when we had sales to Fuel Systems, as a distributor of
20 Groeneveld products since 1985, and we no longer sell to
21 them, then that is directly attributable to Lubecore.

22 **Q.** Let's talk about Fuel Systems specifically in a
23 minute, but --

24 **A.** Um-hum.

10:15:34 25 **Q.** -- at the end of the day, in addition to the economy

Wilson - Cross

1 and your decreased advertising cost, several factors could
2 have played a role in sales decreases, right? I think you
3 even acknowledged that this morning. What about other
4 competitors? Could some of these sales have gone to other
10:15:53 5 competitors?

6 **A.** It is possible, but not likely.

7 **Q.** Do you even have any way to know whether Groeneveld
8 was specifically competing for any of the customers that
9 Lubecore sold its products to during these years? Were they
10:16:17 10 out there, fighting for that sale?

11 **A.** Who was -- who's they?

12 **Q.** Your sales force, whether it be through your
13 distributor --

14 **A.** Well, you do have to remember that our sales force in
10:16:29 15 the territory of Wisconsin, for example, was Fuel Systems,
16 you know. They represented us exclusively in their area,
17 and so that -- that would be a totally different scenario
18 than if we were going head to head with the end customer,
19 with our direct sales force.

20 **Q.** Well, you got another distributor in Wisconsin pretty
21 quickly, right? Mr. DeCleene is your distributor up there?

22 **A.** Um-hum, yes.

23 **Q.** And do you know with respect to every sale that every
24 call that Fuel Systems is making on a customer that Mike
10:17:08 25 DeCleene's right there next to him fighting for that sale?

Wilson - Cross

1 Do you even know if he's competing? I mean we've heard
2 testimony that 5 to 10 percent of the trucking industry uses
3 these products. How do you know he wasn't out there
4 soliciting new customers that you guys weren't even
10:17:22 5 competing for?

6 MS. MICHELSON: I'm going to object to the
7 compound question.

8 THE COURT: Overruled, overruled. If she
9 doesn't understand the question, she can say so.

10:17:30 10 MS. MICHELSON: I know it was a lot in there
11 and lots of questions. That's my objection, but I
12 understand.

13 THE COURT: Seems to be the rule of thumb for
14 this trial, doesn't it?

10:17:39 15 (Laughter.)

16 THE WITNESS: Okay. So now with, you know,
17 the recent discussion, I really lost track, so.

18 **Q.** That's all right. You placed -- unfortunately, it'll
19 probably require a compound sentence to restate everything I
20 just did, but you replaced Fuel Systems with Mike DeCleene,
21 correct, as a distributor in Wisconsin, and that didn't take
22 long, right?

23 **A.** Correct.

24 **Q.** And we know from prior testimony that not a whole lot
10:18:08 25 of people in this industry even know about these products.

Wilson - Cross

1 So how do you know -- my question is how do you know that
2 Mike DeCleene was out there making sales calls on every
3 single one of Fuel Systems' customers trying to fight for
4 those sales? You don't, do you?

10:18:28 5 **A.** I --

6 **Q.** Well, yes or no, is -- shouldn't be that complicated
7 at the end of the day.

8 **A.** It is complicated because you added in a few ideas
9 there and implying that DeCleene may or may not have been as
10 actively promoting our product as Fuel Systems, and whether
11 or not I know, you know, what his sales activities are
12 versus Fuel Systems'. I can certainly tell that Fuel
13 Systems, having been a distributor of Groeneveld products
14 and sort of the very first representation of Groeneveld in
15 the USA, with many, many years of experience, would be on a
16 different plain -- level playing field than Mr. DeCleene
17 that, you know, we have to, you know, train and start up,
18 and assist, and help. So does -- do did he have the same
19 sales capability, the same network of customers? I think
20 that's unlikely.

21 **Q.** Thank you very much. That's -- that's exactly my
22 point here. You really don't know that some of these other
23 factors aren't the reason you lost these sales, the
24 motivation of your own sales force, the skill of your own
10:19:54 25 distributors and sales force, that could have played a role

Wilson - Cross

1 in whether or not you got these sales that you're saying you
2 lost to Lubecore, right?

3 **A.** We're talking about a territory that was being
4 represented by a skilled distributor on an exclusive basis.

10:20:17 5 THE COURT: Okay. Listen. We'll break now if
6 that's okay with you.

7 MS. ZUJKOWSKI: Thank you.

8 THE COURT: All right, folks. We'll be in
9 recess. I've got -- you can see the crowd gathering in the
10 back. We've got a couple things to do, and so I will say
11 we'll be in recess until 11:00. All right? And so you can
12 refresh yourself, relax, and once I do a couple of our short
13 hearings here, Shirle is entitled to a break, don't you
14 think? That's Shirle. And so that's why we'll take a
15 little bit of extra time. So keep in mind the admonition.
16 See you about 11:00.

17 (Thereupon, a recess was taken.)

18 THE COURT: Now, when you're at work and the
19 boss says you get a 15 or half hour break and you have one
20 like this, you'd like that, wouldn't you?

21 (Laughter.)

22 THE COURT: All the lawyers and everybody has
23 been here ready to go except for me. We had a criminal
24 matter where the poor guy -- right, Shirle -- had the last
11:42:13 25 time he was here, he had both of his girlfriends, and since

Wilson - Cross

1 the kids with each girlfriend, now one in the hospital
2 having another baby and living with the other one, and he
3 just can't go to jail because he's got too many
4 responsibilities.

11:42:26 5 MS. MICHELSON: And your Honor, how many of
6 his wives were here as well?

7 THE COURT: That's hard to say. A different
8 world we live in today. And the next was a civil case, and
9 I told the lawyers be like higher court; the Court of
11:42:44 10 Appeals is 15 minutes a side to argue their motions. What
11 time is it, quarter to 12:00?

12 (Laughter.)

13 THE COURT: You give a lawyer 15 minutes, what
14 do they take? As much as they can, right? So I apologize
15 for the delay, having you sitting around, but we'll go until
16 12:30 and break for lunch if that's okay with everybody, and
17 we'll work the schedule that way. Melissa, are you ready?
18 No longer quizzical.

19 MS. ZUJKOWSKI: Thank you. I hope not.

11:43:13 20 THE COURT: She has been standing at the
21 podium for ten minutes ready to go.

22 BY MS. ZUJKOWSKI:

23 **Q.** Gail, before we took the break, we were talking about
24 Mike DeCleene up in Wisconsin, and I think we established
11:43:25 25 pretty clearly that he took over from Fuel Systems as your

Wilson - Cross

1 distributor there as Groeneveld's distributor there. And I
2 think you acknowledge he may not have had the same contact
3 networks as Fuel Systems did, as Bill Koppelman did, right?

4 **A.** Correct.

11:43:41 5 **Q.** Okay.

6 He may have, though, for all we know. I mean he was
7 -- it's true he was actually a partner with Fuel Systems and
8 involved in a partnership through which he did actually
9 distribute Groeneveld's products prior to becoming its
11:43:56 10 exclusive distributor in Wisconsin, though, right?

11 **A.** The extent of their relationship, I'm not sure. Fuel
12 Systems did use or partnered with DeCleene. I'm not sure of
13 the period of time, and I'm not sure of the extent.

14 **Q.** Okay.

11:44:15 15 You know, he had some experience and that there was a
16 relationship there and enough to know that he probably
17 didn't have as much of a learning curve getting up to speed
18 as distributor as someone starting from scratch would have,
19 right?

11:44:27 20 **A.** Right. But, he also had the challenges of, you know,
21 customers that are confused about who's selling what, and,
22 you know, so there are additional challenges for a new
23 distributor.

24 **Q.** Okay.

11:44:49 25 We'll talk about that in a second, but just to

Wilson - Cross

1 continue covering some of these other factors that may have
2 played a role in Groeneveld's sales decline, what about
3 price, product pricing? Would that have played a role in
4 your competing for some of these customers against Lubecore
11:44:58 5 and others? All I'm asking is whether it could have, you
6 know, whether as he --

7 **A.** There's always, you know, marketing 101, a long list
8 of things that can influence the sales levels.

9 **Q.** Sure.

11:45:20 10 Somebody could have had a poor experience with
11 Groeneveld or with a servicer or with an installer
12 potentially, right?

13 **A.** Absolutely.

14 **Q.** There could have been a change in demand. I
11:45:33 15 understand that there was apparently change in the
16 Government's regulations with respect to something called
17 dis-brakes, which apparently means that there's less
18 greasing points on new trucks that need to be serviced.
19 Have you heard about this?

20 **A.** Yes, there's -- in the regular marketplace, there's
21 technological factors that influence it as well, yes.

22 **Q.** So change in demand for these products altogether?

23 **A.** Pardon?

24 **Q.** Change potentially at least demand for the proceeds
11:46:01 25 altogether?

Wilson - Cross

1 **A.** Not sure I like that choice altogether, but again,
2 there will be a long list of influences on sales volumes.

3 **Q.** Okay.

4 With all of that in mind, to even suggest that the
11:46:17 5 sales decline or any portion of it is attributable to
6 competition from Lubecore as a new market is pretty
7 speculative, isn't it?

8 **A.** Not in my opinion.

9 **Q.** Even a step more speculative to determine a sale was
11:46:35 10 lost due to a confused customer; isn't that true?

11 **A.** Are you asking me if that's what I said? It's not
12 what I said.

13 **Q.** Well, a couple minutes ago. You said Mike DeCleene
14 had to worry about potentially confused customers up in
11:46:55 15 Wisconsin, and your case is about whether or not customers
16 in this industry are confused about the source of these two
17 products. So to show some sort of causation here, we need
18 to talk about whether or not a confused customer buying
19 Lubecore's pump instead of the Groeneveld pump is actually
11:47:13 20 the reason why Groeneveld lost the sale. Do you now
21 understand the context in which I'm going to ask you a
22 couple other questions on that point?

23 **A.** Yes, I understand the context.

24 **Q.** Okay. So you don't know the specific circumstances of
11:47:26 25 any sale made by Lubecore to one of its customers? You

Wilson - Cross

1 don't know the sophistication of the customer that Lubecore
2 is dealing with, do you?

3 MS. MICHELSON: Objection, compound question.

4 THE COURT: Overruled.

11:47:40 5 THE WITNESS: You know, I think when perhaps
6 you may have had an opportunity to ask my colleague,
7 Mr. Kees Wapenaar those specific questions.

8 Q. Just asking if you know right now, do you know the
9 answer to the -- you know, if you don't know, that's okay.

11:47:58 10 A. But, you asked a general question. I'm sorry, not
11 trying to be difficult. I --

12 Q. Do you know the specific sophistication level of
13 any of the end user customers that are buying Lubecore
14 products from its distributors, the ones that are basically
11:48:16 15 forming these numbers, we're going to talk about in a little
16 bit that you're basing your so-called damages analysis on?

17 A. The sophistication of the Lubecore customers or the
18 sophistication of customers that buy automatic greasing
19 systems? I know that, you know, there's a thoughtfulness by
11:48:39 20 the purchaser of a greasing system, but I, you know,
21 specifically about the Lubecore customers, no.

22 Q. So thoughtfulness, actually that suggests to you,
23 doesn't it, that these people are not likely to be confused
24 by the source of the product that they're buying; they're
11:49:00 25 not walking into a store and picking something off the shelf

Wilson - Cross

1 that's sitting next to something else on the shelf the way
2 they would at a drugstore, are they?

3 MS. MICHELSON: That's objectionable and
4 misleading.

11:49:09 5 THE COURT: Overruled. I don't need a speech
6 after the objection.

7 THE WITNESS: The decision that a purchaser of
8 a large piece of equipment like a tractor trailer is not
9 taken lightly. I'm sure. But, I just -- I can't even
11:49:32 10 understand -- I can't relate to your analogy of picking two
things off of a shelf. There's -- the fact that they
12 understand the concept of automatic lubrication system and
13 will -- they appreciate or understand how that will help
14 their maintenance costs is what I was referring to about
11:50:01 15 thoughtfulness.

16 So the fact we've had relationships and a product and
17 image and leadership in the marketplace, they may very well
18 have been confused that seeing the Lubecore pump was being
19 distributed by the same people that had previously
11:50:29 20 distributed the Groeneveld product.

21 Q. But, you don't know that they were confused, do you?
22 You don't have any evidence of any customer being actually
23 confused about the source of these products?

24 A. Well, I did not testify about that confusion, but I
11:50:42 25 believe there were other witnesses that would have.

Wilson - Cross

1 Q. I'm not sure that there were actually. And does it
2 even make sense to you that someone who is as thoughtful as
3 you describe them doesn't understand the distributor who
4 they're dealing with or the manual that they're being given
11:51:02 5 is identifying the source of the product that they're
6 buying?

7 A. Well, the manual that's given is probably done by
8 the -- looked at by the technician or mechanics, which they
9 may very well be different than the purchaser, than the
11:51:20 10 engineer. So I -- you know.

11 Q. What about a sales brochure that says Lubecore on it?
12 You think these thoughtful people are not smart enough to
13 know that a guy who says I'm the Lubecore distributor,
14 who's handing them a brochure that says Lubecore and selling
11:51:35 15 a pump with Lubecore on it is selling a Lubecore product?
16 Are you seriously suggesting that?

17 A. Well, I'm serious about everything that I do, yes.

18 Q. Fair enough. I'd like to -- I'm going to move on here
19 and I don't mean to cut you off.

11:51:49 20 MS. MICHELSON: Can she answer the question?

21 THE COURT: She did answer the question.

22 BY MS. ZUJKOWSKI:

23 Q. You don't even know if a customer who's buying a
24 Lubecore product is switching over from a different
11:52:01 25 competitor like Grease Jockey or Lincoln or one of the other

Wilson - Cross

1 competitors that we've talked about, do you?

2 **A.** Yeah, fair enough. They might have been switching to
3 Lubecore thinking it was Groeneveld. I -- you know, I don't
4 know.

11:52:15 5 **Q.** They might have been. We just don't know. It's -- we
6 just don't know, right?

7 **A.** Right.

8 **Q.** All of this is speculative; isn't that right?

9 **A.** No, I don't -- I do not believe it's speculative.

11:52:27 10 **Q.** Okay. Let's move on. Let's talk about the former
11 Groeneveld employees and distributors that you've testified
12 about. There's been a lot of talk about Fuel Systems and
13 everyone I think is aware by now Fuel Systems is a former
14 Groeneveld distributor, now they're a Lubecore distributor,
15 right?

16 **A.** Correct.

17 **Q.** Do you know which party terminated the relationship
18 between Fuel Systems and Groeneveld?

19 **A.** At the end of the day legally, I am not sure who
20 terminated whom. It was a parting of the ways.

21 **Q.** Let's talk about it a little more. You mentioned they
22 were your exclusively distributor in Wisconsin, but that's
23 not really true. Did Fuel Systems ever have a written
24 exclusive distributorship contract with Groeneveld?

11:53:20 25 **A.** Did they ever have a written contract? No. Do they

Wilson - Cross

1 have a verbal contract? Yes, since 1985, I believe.

2 Q. Do you know if it's even enforceable to have a verbal
3 exclusive distributorship contract dating back to 1985? Is
4 there even such a thing?

11:53:39 5 A. I'm sorry. I'm not a lawyer. So I couldn't comment
6 on that, but --

7 Q. There wasn't a written contract, though, right? You
8 know that, don't you?

9 A. I know that, but there was many years of history and
11:53:52 10 ways of doing business and understandings and agreements.

11 Q. Did there come a time when Fuel Systems became unhappy
12 with the speed at which it was getting its parts and
13 supplies from Groeneveld?

14 A. They did claim in a nonspecific way that they were
11:54:11 15 disappointed with the supply of delivery of parts from
16 Groeneveld.

17 Q. Thank you. And then at some point, Groeneveld
18 actually did ask Fuel Systems to sign over a written
19 exclusive distributorship contract, didn't they?

20 A. Yes.

21 Q. They refused, didn't they?

22 A. Yes.

23 Q. And that's when Groeneveld terminated Fuel Systems as
24 a distributor, right?

11:54:32 25 A. Well, I would say they didn't refuse. In fact, they

Wilson - Cross

1 said sure. We're open to, you know, looking at an
2 agreement, send us a draft, and we'll get back to you, and
3 we'll have our lawyers look at it and give you feedback.
4 And this was the nature of the discussion about okay, yes,
11:54:53 5 , maybe we should put something in writing, and then that
6 disappeared, so.

7 Q. Why would Fuel Systems need to look at a draft about
8 it or have their lawyers consider it if they were already
9 bound by some sort of exclusive distributorship agreement
11:55:09 10 orally?

11 A. Perhaps we wanted to make some changes or clarify each
12 party's roles and responsibilities because it had been a
13 good many years that we'd been doing business together.

14 Q. Groeneveld has not sued Fuel Systems, have they?

11:55:31 15 A. No.

16 Q. And that's because Fuel Systems did not breach any
17 agreement with Groeneveld, did they?

18 MS. MICHELSON: Objection.

19 THE COURT: Overruled.

11:55:39 20 MS. MICHELSON: Legal conclusion.

21 THE COURT: Overruled.

22 THE WITNESS: You know, we -- just -- we're in
23 the business for trying to sort things out, and we had a
24 long standing relationship with Fuel Systems, and I really
11:55:58 25 don't -- I don't know really the extent that we may have had

Wilson - Cross

1 legal recourse, but for certain, it was not the route we
2 wanted to go.

3 Q. We also talked about a distributor called All Points
4 in Texas and until this past, I guess it was a year ago last
11:56:17 5 summer, it was a distributor of Groeneveld products under
6 the name of Groeneveld North Texas, right?

7 A. Correct.

8 Q. Okay.

9 Would you agree Groeneveld terminated that distributor
11:56:30 10 in 2010 due to poor sales performance?

11 A. Yes, that's correct.

12 Q. So they didn't leave voluntarily, you terminated them?
13 What about the distributor AMS here in Ohio, who is a former
14 employer of Groeneveld? That's Jerry DeWeaver, right?

11:56:51 15 A. Jerome DeWeaver.

16 Q. And he left Groeneveld around 2008, right?

17 A. Correct.

18 Q. Mr. DeWeaver, he's legally blind, isn't he?

19 A. I believe so, yes.

20 Q. And isn't it true he's got a claim pending against
21 Groeneveld relating to failure to accommodate that
22 disability?

23 MS. MICHELSON: I'm going to object.

24 THE COURT: The objection is sustained.

25 Q. What about any of Mr. DeWeaver's other employees? I

Wilson - Cross

1 think Debbie ran a few names by you. Any of them get fired
2 by Groeneveld?

3 **A.** Did any of them -- pardon?

4 **Q.** Mr. DeWeaver's lower level employees that you
11:57:28 5 mentioned a few during?

6 **A.** Yeah, I didn't hear what the question was.

7 **Q.** Were any of them fired by Groeneveld?

8 **A.** There was terminations of all of those people. I am
9 not at all suggesting that these were people that were under
11:57:46 10 our employ, and then went to Lubecore. They were
11 terminated, and yes, I've never suggested otherwise.

12 **Q.** Thank you. Every single one of them had a right to go
13 get another job, seek out another opportunity?

14 **A.** Absolutely, absolutely. No problem with that.

11:58:02 15 **Q.** Thank you. Lubecore's distributor in Florida consists
16 of one former Groeneveld employee, Chad Cole, right?

17 **A.** Correct.

18 **Q.** And a former installing dealer, Louis Boronco, right?

19 **A.** Correct.

11:58:13 20 **Q.** The former employee was Chad?

21 **A.** Chad Cole, yes.

22 **Q.** And his relationship with Groeneveld ended in 2009
23 because he was also terminated, right?

24 **A.** Yes, through our downsizing.

11:58:26 25 **Q.** Okay. The installer, Lou Boronco, I think he left on

Wilson - Cross

1 his own, but he wasn't getting paid on his invoice; is that
2 right?

3 **A.** Absolutely incorrect.

4 **Q.** Okay. So if he said so, he'd be lying?

11:58:40 5 **A.** I don't -- that's pretty strong words. So I don't --
6 I don't believe that there's any dispute about invoice
7 payments.

8 **Q.** Was there at any time?

9 **A.** Was there at any time?

11:58:59 10 **Q.** Right. Did Mr. Boronco ever complain his invoices
11 were getting paid too slow?

12 **A.** He had complained about that, yes.

13 **Q.** Okay. Thank you.

14 **A.** I will add, though, that you know in the grand scheme
15 of things, this wasn't a constant discussion between Boronco
16 and ourselves. He submits invoices quite late and expects
17 immediate payment, even though it was for work or services
18 rendered previously. So, you know, there's always -- it was
19 not about an intentional withholding or late payment.

20 **Q.** In any case, he was dissatisfied with the relationship
21 and he had a right to leave and get a new job, and that's
22 what he did, right?

23 MS. MICHELSON: Objection, speculation.

24 THE COURT: Overruled. And I don't need a
25 reason for the objection.

Wilson - Cross

1 MS. MICHELSON: Oh, I'm sorry, your Honor.

2 MS. ZUJKOWSKI: Correct.

3 THE WITNESS: I believe we've already looked
4 at one of the documents.

11:59:55 5 BY MS. ZUJKOWSKI:

6 Q. Where a Groeneveld Transport Efficiency terminated the
7 relationship with Mr. Boronco? Thank you.

8 All these people we just talked about -- Mr. Cole,
9 Mr. DeWeaver, Mr. Koppelman, Fuel Systems, Inc. -- in case,
12:00:13 10 anyone doesn't remember, Mr. Boronco, all of these people
11 appear to be affiliated with the autolubeparts.com website
12 which we've talked about a fair amount during your
13 testimony, right? Their distributors? And you knew about
14 the auto lube parts website that those distributors set up
12:00:34 15 last fall when you testified at the PI hearing, didn't you?

16 A. Sorry. Didn't -- I know about those distributors were
17 set up last fall?

18 Q. Yeah.

19 A. Is that the question?

20 Q. Autolubeparts.com they had set up that website?

21 A. Correct.

22 Q. And that same website was looked at as an exhibit
23 during the preliminary injunction hearing, right?

24 A. Correct.

12:00:54 25 Q. Groeneveld send any kind of cease and desist letters

Wilson - Cross

1 asking them to shut it down since then?

2 **A.** No, we haven't.

3 **Q.** Sued any distributors in connection in connection with
4 their website discussion?

12:01:07 5 **A.** No, we haven't.

6 **Q.** What about Fuel Systems in connection with its
7 website; sued them? We looked at that earlier yesterday.

8 **A.** No, we haven't.

9 **Q.** I'm sorry.

10 It didn't sue them because these people aren't doing
11 anything illegal, are they?

12 MS. MICHELSON: I'm going to object.

13 THE COURT: Overruled.

14 THE WITNESS: Illegal? I don't know. Part of
15 our discussion and our strategy, we weren't talking about
16 the legalities of what they were or were not doing. It's
17 just the presentation of what they're representing, just
18 doesn't -- is not correct.

19 **Q.** Do you have any actual knowledge that Lubecore itself
20 owns or operates or controls that website in any way?

21 **A.** The AMS website?

22 **Q.** Yes, whether Lubecore controls the website, that's
23 called AMS, Autolube Parts' website, yes?

24 **A.** I mean I have no -- I do not know that Lubecore has
25 any direct control or authorship of that website.

Wilson - Cross

1 **Q.** Does Groeneveld have control or authorship over its
2 independent distributors' web sites?

3 **A.** No, I think the company website is the company's
4 website.

12:02:53 5 **Q.** Thank you. So Groeneveld fires or creates a poor
6 working environment for these people and then tries to imply
7 here today that there's something wrong with them finding
8 new opportunities in the field that they know in setting up
9 a website to sell their products?

12:03:08 10 **A.** A poor working environment? I really am confused by
11 what you're wanting me to agree with. There's some pretty
12 strong words in there.

13 **Q.** I apologize. I'll withdraw the question.

14 Let's move on. I want to take a quick look at the
15 search page that was introduced yesterday.

16 You had conducted, I think you testified, a Google
17 search with the term Groeneveld Grease System and
18 autolubeparts.com comes up as one of the hits, right?

19 **A.** Correct.

12:03:43 20 MS. ZUJKOWSKI: Can we switch to the Elmo?

21 **Q.** Why does that say debbiemichelson@miller.com at the
22 top of this page after you conduct this search?

23 **A.** So the document that was submitted was printed from
24 Debbie Michelson's computer.

12:04:09 25 **Q.** Okay. So you did conduct this search yourself; is

Wilson - Cross

1 that your testimony?

2 **A.** I also conducted the search, yes.

3 **Q.** Okay. So she just recreated it to make the exhibit
4 then?

12:04:19 5 **A.** Well, are you asking me who conducted it first or
6 second? I -- you know --

7 **Q.** I'm just asking whether or not the exhibit was
8 conducted by you as I thought you had testified yesterday
9 came as a result of a search you conducted?

12:04:38 10 **A.** Well, I conducted the search. Did I print this piece
11 of paper? No.

12 **Q.** Thank you very much. Let's turn to Page 2 of this
13 exhibit. See this over here in the right, where it says
14 sponsored links?

12:04:54 15 **A.** Correct, yes.

16 **Q.** Autolube Parts website is not off to the right under a
17 sponsored link column, it's in the middle where the organic
18 search results come up, isn't it?

19 **A.** Sorry. You said it was in the middle?

20 **Q.** I change. I apologize. Maybe I'm going too quick.
21 Let's stick here for a second. In the right hand column of
22 the page, which prints the Google search, you see a couple
23 of sponsored links on the right, do you see that to the
24 right?

25 **A.** Yes, yes.

Wilson - Cross

1 **Q.** Okay. Doesn't that mean that the site owner of the
2 sites under the sponsored links paid some sort of money to
3 Google to try to get their name to come up? Is that your
4 interpretation of what a sponsor link is?

12:05:40 5 **A.** Yes.

6 **Q.** Okay. So when your result comes up, in the
7 nonsponsored links catalog, I'm using the word organic
8 search to describe how that comes up, and I just wanted to
9 confirm with you, doesn't that mean to you that the site
12:05:55 10 owner doesn't do anything special to get their hit to come
11 up?

12 MS. MICHELSON: Objection.

13 THE COURT: Overruled.

14 THE WITNESS: I am not an expert in how you
12:06:07 15 tag or design your website pages to move them up and down
16 the regular organic database searches.

17 **Q.** You certainly aren't trying to suggest that Autolube
18 Parts somehow controls Google search algorithm, are you?

19 **A.** As I said, I am not technically knowledgeable enough
12:06:39 20 to know how a company directly influences that. And so all
21 I'm presenting is the fact that when I call it up automatic,
22 the AMS website comes up, also because of the use of the
23 word Groeneveld in their text.

24 **Q.** All right. Thanks.

12:07:05 25 Lubecore, if you accept as your testimony about

Wilson - Cross

1 Lubecore doesn't have any control whatsoever over this
2 website, you certainly wouldn't expect them to have anything
3 to do with how they come up in response to a Google search,
4 would you?

12:07:20 5 MS. MICHELSON: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: Yeah, I don't think to me this
8 is about necessarily who did, why they did it, how it comes
9 up. It's again just showing that there is confusion about
12:07:39 10 some of the companies out there that have Groeneveld's name
11 and association with Lubecore's name.

12 Q. Once you start looking at the website itself, even if
13 you do plug in the name Groeneveld, the name of an ALS pump,
14 pops up some ALS pumps. They're all with clearly labeled
12:08:04 15 Lubecore pumps on the website, aren't they?

16 A. Yes.

17 Q. The pictures don't say Groeneveld?

18 A. Yes, correct.

19 Q. Why would Autolube Parts show pictures of Groeneveld
20 Lubecore's pump if they were trying to confuse anyone into
21 thinking it was a Groeneveld product?

22 A. You'll have to ask Mr. DeWeaver what his intention
23 was, but the --

24 Q. Does it make sense to you that's something someone
12:08:40 25 would do to try to cause confusion, put a picture of a

Wilson - Cross

1 labeled pump on the website?

2 **A.** Well, if they didn't want to cause confusion, they
3 didn't have to have the pump looking exactly like ours,
4 combined with all the other things, that means that perhaps
12:08:59 5 they're banking on the reputation of Groeneveld's market
6 presence to date.

7 **Q.** Well, let's talk about trying to bank on someone
8 else's reputation for a second actually. Are you aware that
9 Groeneveld recently registered the trade name Lubecore in
12:09:14 10 three European companies?

11 **A.** No, I was not.

12 **Q.** Take a look at another exhibit.

13 MS. MICHELSON: Do I get a copy of this? Can
14 I have a copy?

12:09:29 15 MS. ZUJKOWSKI: Sure. I'll bring one up to
16 you.

17 MS. MICHELSON: Thanks so much.

18 MS. ZUJKOWSKI: I guess we'll be marking this
19 TXZ.

20 **Q.** Does this refresh your recollection at all as to
21 whether or not Groeneveld gone out there recently and tried
22 to register Lube core's company name as a trade name?

23 MS. MICHELSON: Objection.

24 THE COURT: Overruled.

12:10:10 25 THE WITNESS: Doesn't refresh my recollection

Wilson - Cross

1 because I was not aware of this. This is not something that
2 came from my office, any office in North America. It's
3 clearly in a different language. So I was not aware of
4 this.

12:10:24 5 **Q.** Thanks. We'll talk to another witness who can
6 interpret it, I think later then. But, is that really fair?
7 If Groeneveld's registering Lubecore's trade name, is that a
8 fair way for them to compete?

9 **A.** A fair way of who, Groeneveld to compete?

12:10:45 10 **Q.** Right, to try to race to the Register's Office in
11 every country in the world and claim a company name as its
12 trade name?

13 **A.** I am not aware of what the purpose is, the reason for
14 this. So I can't comment on -- about what you say is fair.

12:11:02 15 **Q.** Do you know if there's any other countries -- by the
16 way, I think it's Belgium Luxenberg, three small European
17 companies countries, any other countries in place in the
18 world where Groeneveld got a strategy of trying to go out
19 there and register Lubecore's trade name for its trade
20 address anywhere, you know of it?

21 **A.** No, I'm not aware of it.

22 **Q.** Okay.

23 Let's talk specifically for a couple minutes about
24 these damages, claims that you made earlier.

12:11:53 25 First, you identified when we looked at Lubecore's

Wilson - Cross

1 2010 natural USA sales projections that contains a list of
2 its distributors, a couple of those distributors that
3 actually I think one or two actually still buybuying from
4 Groeneveld; is that right?

12:12:16 5 **A.** Well, Frank's Quality Service is a Groeneveld
6 distributor. Could you just sharpen it a bit? It's very
7 difficult to read the names for me. Thank you.

8 **Q.** If you're having more trouble, I'm happy to bring it
9 up.

12:12:47 10 **A.** No, no, that's fine. So the question is what people
11 do we still sell to?

12 **Q.** Right. Which one of them is a dual distributor, I
13 guess.

14 **A.** Well, I don't know if the sale to Franks Quality
15 Service was a distributor of Lubecore or if it was just a
16 projected sale, did it actually happen, but that company is
17 a Groeneveld distributor as well.

18 **Q.** Okay. So there's two that are in some form still
19 buying products from Groeneveld; is that correct?

12:13:22 20 **A.** The other one, I'm not sure exactly which company it
21 was, that would have been the one owned by the Schmucks. I
22 don't recognize their company name, North River Truck.

23 **Q.** Up to three now or four?

24 **A.** Pardon?

12:13:53 25 **Q.** Is it three now or four? I lost count?

Wilson - Cross

1 MS. MICHELSON: Objection.

2 THE COURT: Overruled.

3 Q. I'm sorry. Not trying to be confusing here. I
4 just -- on this list of distributors, what -- you said a
12:14:07 5 couple names and you're rattling them off and I'm not trying
6 to unfairly summarize you. What's the total number of these
7 folks that are still buying Groeneveld parts, products?

8 A. Under those company names, Frank's Quality Services.

9 Q. Okay.

12:14:26 10 A. And as I said, you were the one who said I previously
11 said two. So all I was confirming was that we have a
12 distributor whose last name is Schmuck and it was mentioned
13 that they are also the people with North River Truck.

14 Q. So there's two of them, the -- that the people have
12:14:50 15 sum relationship with. I guess they operate under a new
16 name now, but essentially two?

17 A. Today.

18 Q. Okay. And that's okay, right? There's nothing
19 unusual in particular about a distributor carrying more than
12:15:04 20 one product line, is there?

21 A. What do you mean unusual?

22 Q. There's lots of folks out there that are sales people
23 that go around and they sell more than one product line.
24 They offer choices to their customers. Scott Marcum does
12:15:17 25 it. We've heard from him. He represents three or four ALS

Wilson - Cross

1 manufactures. That's not that unusual is my question to
2 you? Does that strike you as unusual?

3 **A.** In the way Groeneveld operates, we do not -- when
4 there's a distributor agreement, although they can each be a
12:15:37 5 little bit different, our standard agreement calls for the
6 company to have an exclusive area if they exclusively sell
7 Groeneveld product. And so we do not normally have -- use a
8 distribution channel where there are multi car lines, if you
9 want to call it that.

12:16:04 10 **Q.** Okay. But, at the end of the day, here we have got
11 two known Lubecore distributors that Groeneveld is still
12 selling product to?

13 **A.** I don't think -- I don't know that Frank's Quality
14 Services is a distributor.

12:16:20 15 **Q.** Maybe they're an end user. This is a list of Lubecore
16 distributors?

17 **A.** Well, \$10,000 in 2010, I've never seen these numbers,
18 so.

19 **Q.** Well these exhibits were introduced a year and a half
20 ago or were a year ago at the preliminary injunction
21 hearing, and no one -- everyone noticed then these guys were
22 on Lubecore's list. Have you terminated them?

23 **A.** Terminated Franks Quality Service?

24 **Q.** Yeah, are you still selling the product?

12:16:50 25 **A.** No, we sell lots of product through them.

Wilson - Cross

1 **Q.** Okay. You've gone on at length about Groeneveld's
2 purported financial analysis, and rather than go back
3 through all of the number, I want to go to the bottom here.

4 You testified you're claiming that \$123,900 of
12:17:11 5 Groeneveld's lost sales in 2009 are supposed to be -- is
6 that the number?

7 **A.** Supposed to be.

8 **Q.** You're blaming Lubecore for the amount of sales lost,
9 \$123,900; is that right? Just trying to go to the summary
12:17:28 10 numbers here?

11 **A.** Yes, that's what I testified. I don't know if I use
12 the word blame, but --

13 **Q.** And then the lost profit in 2010 is \$367,000, and
14 you're trying to blame that lost profit on Lubecore, right?

12:17:44 15 **A.** Those are the damages we sustained, yes.

16 **Q.** And in 2011, you're trying to blame \$734,727
17 approximately of lost profits on Lubecore, right?

18 **A.** That was my calculation, yes.

19 **Q.** All right.

12:18:03 20 So the total amount you're trying to blame lost
21 profits on Lubecore is about \$1.2 million?

22 **A.** Correct.

23 **Q.** Okay.

24 **A.** For those three years.

12:18:32 25 MS. ZUJOWSKI: I'm not sure where my copy of

Wilson - Cross

1 PX-103 is, Tom. Do you have an extra one? Debbie got it,
2 Tom, thanks. Thank you.

3 MS. MICHELSON: No problem.

4 **Q.** I guess I did have it up here, but we'll use hers
12:18:57 5 because it's got some calculations on it that may be
6 helpful. This document shows all USA actual sales numbers,
7 right, the top of it? Nothing about this suggests that
8 these numbers are limited to Lubecore's sales in connection
9 with its EP-0 pump?

12:19:22 10 **A.** That's correct.

11 **Q.** If you take a look at Exhibit DX-X --

12 MS. MICHELSON: Your Honor, I have to place an
13 objection on the record.

14 THE COURT: Overruled.

12:19:38 15 MS. MICHELSON: Thank you.

16 **Q.** Let's just, before we go to it, let's just remember
17 the numbers we're dealing with here. For 2009, we'll go one
18 year at a time. Lubecore's actual sales of all products in
19 the U.S. are represented as \$384,000 approximately. Now, if
20 you look at the document --

21 **A.** That says -- you said 2009. It's not on there.

22 **Q.** I'm sorry. I meant to say 2010, although I'm
23 little --

24 MS. MICHELSON: I have -- Ms. Zujkowski, I
12:20:13 25 have 2009 on this because you didn't previously give us any

1 2009 numbers. So I have this if this helps you for the 2009
2 numbers.

3 MS. ZUJKOWSKI: Thanks.

4 MS. MICHELSON: Sure.

12:20:38 5 (Counsel conferring.)

6 BY MS. ZUJKOWSKI:

7 Q. We'll just go with this document. I didn't realize it
8 didn't have 2009 on there.

9 If we look at the document that only shows numbers
12:20:51 10 related to the sale of Lubecore's EP-0 pump, the numbers
11 2009 are how many?

12 A. I don't know. I'm sorry. I've never seen this
13 document before, so.

14 g. Well, based on the document?

A. But, I can't even see the heading. Sorry.

16 Q. I'm just going to move it so you can hopefully. Total
17 revenue column here is the one i'M trying to direct your
18 attention to.

19 A. Okay.

12:21:28 20 Q. So for 2009, what was Lubecore's according to this
21 document, I understand you haven't seen it before?

22 A. I'm just asking is the first line 2009 because I can't
23 see it on the screen.

24 Q. It is. I'll help you further. So for 2009 -- in
12:21:43 25 fact, let's do this. For 2009, it's the only item I'm

Wilson - Cross

1 showing --

2 **A.** Okay.

3 **Q.** -- line I'm showing. What number does this document
4 reflect for total revenue column?

12:22:03 5 **A.** \$315,232 is what the column says under the column
6 total revenue.

7 **Q.** Okay. And what about for 2010?

8 **A.** Well, I have to assume the second line is 2010, and I
9 would trust --

12:22:17 10 **Q.** I was trying to help out with this guide here.

11 **A.** Yeah, it is truncated on my screen. You do understand
12 that, right, so -- okay, perfect. \$474,985.

13 **Q.** Thanks. And for 2011 so far?

14 **A.** \$757,870.

12:22:39 15 **Q.** Okay. Let's remember that number for a second.

16 That's actually quite a bit less than the projected sales
17 numbers than you were using to run your analysis, isn't it?

18 **A.** Yes, it is.

19 **Q.** Now, I understand that Lubecore's the one that made
12:23:03 20 these projections, but it appears they were a bit
21 optimistic. And at the end of the day, don't you think your
22 analysis should have incorporated the real numbers?

23 **A.** I believe I personally did not have the real numbers
24 for two reasons. I think the primary reason is that they
12:23:26 25 were labeled as highly confidential, and I was not permitted

Wilson - Cross

1 to look at those.

2 Q. Well, let's do -- I mean we got them now and it
3 shouldn't be that complicated of an analysis.

4 A. Okay.

12:23:37 5 Q. You called your analysis conservative, but it's really
6 not. If you're using the real numbers --

7 MS. MICHELSON: I'm going to object to the
8 reference to this is real numbers. There's no testimony
9 that they are what it is.

12:23:49 10 MS. ZUJKOWSKI: There will be testimony about
11 this document and its foundation.

12 THE COURT: Okay. Go ahead. Go ahead.

13 Q. And I'm sorry to everyone with some math, but you
14 still have your calculator, Gail?

12:24:05 15 A. I sure do.

16 Q. Okay, good.

17 Can we apply your margin contributor or whatever it
18 was you were calling to these numbers relatively quickly,
19 sum up the sales numbers for the same years that you looked
20 at in your analysis, and is it --

21 A. Sure.

22 Q. 53 percent?

23 A. I'll just talk out loud here. 315232 plus 474985,
24 757,870, times .413, \$639,560.

12:24:45 25 Q. Okay. So that's about half the number that you were

Wilson - Cross

1 trying to blame on Lubecore when you were using the
2 projected numbers instead of actual numbers?

3 **A.** The 2011 number is only to September. So you know we
4 would have to see -- naturalize that for a full year. I
12:25:01 5 think the previous number might have been a full year.
6 Could you put your other schedule up, please?

7 **Q.** Sure. Let's see 2011 projected sells?

8 **A.** 2084, and, the -- I don't know exactly on this
9 schedule again, it was highly confidential. So I
12:25:25 10 couldn't -- I was not permitted to look at the numbers, and
11 that's why I came with my calculation based on a percentage.
12 So this schedule said that at a certain point in 2010, the
13 sales, actual sales were \$384,000 with a forecast of 1042,
14 and your actual numbers are saying they were 415. Is
12:25:56 15 that -- is that the point you're trying to make?

16 **Q.** Right, that the actual numbers are significantly less
17 than the projected numbers that you used in your analysis?

18 **A.** Fair enough. I understand that.

19 **Q.** And I understand that the -- that the 757,000 number
20 for 2011 only goes through the end of September, and that
21 there's another couple months left in the year after that.
22 I understand that. Did you seasonalize -- does your number
23 then in your other analysis include some sort of projection
24 through the end of the year or did it get cut off at the
12:26:28 25 same time?

Wilson - Cross

1 **A.** My other number, the only number was when we were
2 actually sitting here. I calculated it based on the numbers
3 that --

4 **Q.** 2011 projection here for the full year?

12:26:42 5 **A.** Correct.

6 **Q.** Meant to be a full projection for the full year?

7 **A.** I believe it was a 12-month period, so.

8 **Q.** So we add a couple more months in fairness to the
9 sales of the \$757,000 number. We don't want to speculate
10 about that, but at the end of the day, we're looking at a
11 number that's 50 percent approximately of what you're
12 talking about?

13 **A.** Correct.

14 **Q.** In your analysis?

12:27:01 15 **A.** Correct.

16 **Q.** Thank you.

17 You testified earlier that the first time you saw the
18 Lubecore pump, it was dirty and grimy and you had trouble
19 seeing the label, right?

12:27:19 20 **A.** The first time I saw Lubecore pump via the picture, it
21 wasn't dirty, grimy, but one of the times I saw the pump in
22 our shop, it was a used pump, yes.

23 **Q.** An actual pump, it was used. I mean it was dirty.

24 **A.** Well, I have gone to trade shows, so I'm just trying
25 to recall if I actually saw a pump prior to the work shop

Wilson - Cross

1 incident.

2 **Q.** We're not trying -- we don't have a picture of you
3 looking at a pump in a trade show. I was just trying to
4 refer back to your testimony.

12:27:59 5 **A.** It wasn't necessarily the first time I saw the pump is
6 my only point, but --

7 **Q.** Fair enough. I just thought you said something to the
8 effect you -- you did see the picture, but later you saw a
9 real pump, and it was dirty and you couldn't tell if it
10 was -- couldn't see the Lubecore sticker?

11 **A.** Correct.

12 **Q.** But, when you first saw these products, they are
13 reasonably clean?

14 **A.** Absolutely, yes.

12:28:17 15 **Q.** In fact, we got on the table here Defendant's Exhibit.
16 Lubecore's pump exhibit is brand new?

17 **A.** Correct.

18 **Q.** By the time any customer's pump becomes dirty and
19 grimy, typically he already owns it, right?

12:28:32 20 **A.** Yes.

21 **Q.** So he's not going to be confused about its source just
22 because now there's some dirt on his pump?

23 **A.** About its source, yes. I'm not -- I mean if you look
24 at it in use on a truck that's moving, perhaps you might
12:28:56 25 think the Lubecore pump's a Groeneveld.

Wilson - Cross

1 THE COURT: That wasn't the question, but
2 we'll break here for lunch. Okay? Lunch.

3 MS. ZUJKOWSKI: Your Honor, I had one more
4 line. I don't know if that makes -- I don't mind. I'm
12:29:08 5 happy to say it after lunch,

6 THE COURT: We'll let you say it after lunch.

7 MS. ZUJKOWSKI: Pardon?

8 THE COURT: We'll let you say it after lunch.

9 MS. ZUJKOWSKI: All right.

12:29:16 10 THE COURT: Folks, 1:45 downstairs.

11 Mr. Yarger, does that sound good?

12 A JUROR: Yes, sir.

13 THE COURT: Have a good lunch. See you then.

14 (Thereupon, a luncheon recess was had.)

12:30:47 15

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Wilson - Redirect

1 Tuesday Session, October 18, 2011, at 1:45 P.M.

2 THE COURT: Good afternoon, ladies and
3 gentlemen.

4 THE JURY: Good afternoon.

13:51:29 5 MS. ZUJKOWSKI: Lubecore has no further
6 questions. Thank you.

7 THE COURT: There you go. See what a break
8 does?

9 (Laughter.)

13:51:37 10 MS. MICHELSON: I'm sorry, but I do have some
11 redirect then.

12 THE COURT: We're not surprised.

13 (Laughter.)

14 THE COURT: I couldn't help it.

13:51:49 15 REDIRECT EXAMINATION OF GAIL WILSON

16 BY MS. MICHELSON:

17 Q. I do need to clear up a few things. One second,
18 please. Just have to find it in my stack.

19 MS. MICHELSON: I'm so sorry about that.

13:52:45 20 THE COURT: No problem. I'll start anyway
21 because I know where I'm going to start.

22 Q. Ms. Wilson, we were talking about -- we were talking
23 about --

24 A. Lots of things.

13:53:33 25 Q. Yes, but I'm going to start with your damages

Wilson - Redirect

1 calculations. First, on what is Exhibit 103, I just would
2 like you to confirm that the handwriting on that document
3 accurately reflects the testimony that you gave about the
4 calculations, the math that you did on the stand that I
13:54:09 5 wrote down as you testified.

6 **A.** If you want me to recheck it to see if you wrote it
7 down correctly, but --

8 **Q.** I was writing it down as you spoke, but I want to make
9 sure.

13:54:27 10 **A.** Well, I'll just -- it was calculation as -- I'll need
11 you to make it more crisp for me, please.

12 **Q.** No problem. And if you want me to bring it and hand
13 it to you, I can do that as well.

14 **A.** No, I'm almost done. Thank you. The numbers that are
13:55:32 15 written here are the calculations that we did, yes.

16 **Q.** Okay.

17 And -- I found it. Okay. And I'm going to ask you to
18 do the same thing on this other exhibit, just confirm that
19 the handwritten calculations accurately reflect the
13:55:57 20 testimony that you gave, and I'm reading from now what's
21 Exhibit 135 as to the amount you calculated of \$123,900 on
22 sales of 200 ALS EP-0 systems in 2009. If those would have
23 gone to Groeneveld.

24 **A.** Yes, that's correct.

13:56:24 25 **Q.** And I think we need to clarify this for the jury. Did

Wilson - Redirect

1 you have access to this document -- did I share this
2 document with you before you got on the stand here in court
3 today?

4 **A.** No.

13:56:51 5 **Q.** Okay. And why not? Why couldn't I just give that to
6 you so that you could do all your work on this before coming
7 into court?

8 **A.** Well, what I understood during some of the previous
9 sessions and process in this eventual trial were that some
13:57:14 10 items were highly confidential and that meant although the
11 attorney could look at it, I -- because of the sensitive
12 nature, I was not permitted to look at the details.

13 **Q.** And reading down -- reading down here, there's a
14 Bates, what's called a Bates number, lube, and there are a
13:57:36 15 bunch of zeros , 296, and can you confirm that that
16 indicates that the source of this document in and the
17 information was Lubecore itself, and that this was -- these
18 were items that were presented to your lawyers in discovery
19 during the discovery process?

20 **A.** It wasn't a schedule that was prepared by me and so I
21 will assume it was prepared by Lubecore and given to you,
22 yes.

23 **Q.** And so when you sat here in court and did your
24 calculations, excepting these numbers on the document 103,
13:58:18 25 whose numbers were you accepting and relying on to do these

Wilson - Redirect

1 calculations in court?

2 **A.** I'm relying on the Lubecore numbers to do the call --
3 to be the starting point in that formula for the calculation
4 for the total dollar damage.

13:58:44 5 **Q.** And were you provided with any numbers, other than
6 those on this document that I -- that I referenced during
7 your direct examination, other than what they said their
8 true and accurate numbers were a year ago when they gave
9 this to me?

13:59:06 10 **A.** Well, I believe the 200 units from 2009 was an
11 additional number that was not part of the confidential
12 information, and that was one of the calculations we did on
13 the other sheet, yes.

14 **Q.** And that information actually came from Mr. Eissis
15 testimony under oath in the case?

16 **A.** Correct.

17 **Q.** And you relied on that when you did your calculations
18 here in court as to Groeneveld's lost sales damages?

19 **A.** Correct.

13:59:34 20 **Q.** There was some suggestion in cross-examination that
21 somehow, it was unfair or it is unfair to rely on Lubecore's
22 representations as to its numbers here.

23 Did you have any other numbers to rely on?

24 **A.** No, other than -- sorry, other than what I had
14:00:22 25 mentioned about the known numbers that I have where I knew,

Wilson - Redirect

1 for instance, what we sold to Fuel Systems in previous years
2 and when those numbers stopped.

3 Q. Yeah. And this new Defendant's Exhibit X, you were
4 asked questions about that. I wrote on -- they marked these
14:01:09 5 documents highly confidential as well?

6 A. Correct.

7 Q. You never had any opportunity before seeing them for
8 the first time in court here to take a look at those
9 numbers?

14:01:25 10 A. Not at all.

11 Q. Is there anything, is there supporting information or
12 documentation included in this exhibit that corroborates the
13 accuracy or the veracity or the reliability of any of the
14 numbers that they now are saying are the actual numbers?
14:01:50 15 Maybe you want to -- I should hand it to you because there
16 are a few pages and you've never seen this before?

17 A. Yeah, it was difficult to read because of the size of
18 the monitor.

19 So sorry. What was the question?

20 Q. Is there any supporting documentation included in
21 those five pages that corroborate where the information came
22 from, whether it's accurate or reliable or not, anything
23 along those lines?

24 A. Well, I mean I have to trust if somebody put something
14:02:32 25 on paper that it's accurate. It doesn't have an auditor's

Wilson - Redirect

1 stamp on it saying it was, you know, saying it was filed for
2 tax purposes, but --

3 Q. So actually tax returns or audited financial
4 statements, those would accurately tell us what the true
14:02:52 5 numbers indeed are from Lubecore, would they not?

6 MR. ANASTOS: Objection.

7 THE COURT: Overruled.

8 THE WITNESS: Well, if -- a set of financial
9 statements has some type of auditor's report. Then
14:03:06 10 depending on the style of the report, it does -- it's more
11 of that independent verification, but it's not necessary for
12 all companies to have audited reports, so.

13 Q. But, an audited financial report would be an
14 independent assessment of the accuracy, reliability, and
14:03:24 15 veracity of the numbers that the company is at least
16 reporting?

17 A. Correct.

18 Q. Okay. Do you see anything along those lines in this
19 piece of paper? They've written numbers on --

14:03:39 20 A. No, I don't.

21 Q. Does anything in here even identify the source of the
22 information where they supposedly got these numbers?

23 A. No, it doesn't say where they came from, specifically.

24 Q. And --

14:03:58 25 A. Says financial results, activity in the USA.

Wilson - Redirect

1 Q. Okay.

2 And are you aware that that highly confidential
3 document that I couldn't even share with you because of the
4 confidentiality restrictions, that wasn't even handed to me
14:04:16 5 until the Tuesday late afternoon, a day and a half before
6 the trial was supposed to start, are you aware of that or --

7 A. I was in your office on --

8 Q. You don't want to tell what lawyers and clients are
9 talking about.

14:04:33 10 A. On Tuesday, and that was when the binder was
11 delivered. So sorry if I've -- I wasn't supposed to say
12 that.

13 Q. No, that's okay. This is the first time I even got it
14 was when they presented this exhibit binder a day and a half
14:04:47 15 before trial, right?

16 A. Correct. It also is -- with information up to
17 September 31st, which I think is just a small typo, but
18 September 30th. So it would have been prepared some time in
19 October. So it definitely is recent.

20 Q. I see. Oh, yeah because there are only 30 days in
21 September, right?

22 A. It feels longer some Septembers, depending upon --

23 Q. October is sure feeling long this year, but I'll tell
24 you that much.

14:05:25 25 I have a question for you about this document. I'm

Wilson - Redirect

1 turning to page X-2. I need another one. You had testified
2 in direct basically about the percentage of Groeneveld's
3 sales attributable to certain EP-0 ALS products. Do you
4 recall that testimony?

14:06:05 5 **A.** Yes.

6 **Q.** I had asked you what's the percentage for the --
7 versus the loose parts, the systems versus the loose parts,
8 and if you could turn to Page X-2?

9 **A.** Yes.

14:06:21 10 **Q.** Is there a way for you to -- up there, I know for the
11 first time, calculate Mr. Eissis's percentages?

12 **A.** Every company separates their product information
13 differently. So this is a little bit unusual. So there's
14 revenue from the column -- revenue EP-0 single-line pump,
14:07:01 15 and I'm looking at the 2009 sheet, \$43,666, and that as a
16 percentage of their total revenue says that it's 13.9
17 percent.

18 **Q.** And so the percentage of the other ALS product sales,
19 under this loose part revenue, loose parts?

20 **A.** Yes, okay. So I would assume, but perhaps Lubecore
21 can answer themselves, that this is only the revenue for
22 just the pump.

23 **Q.** When you say this, you're talking about the revenue
24 under the column revenue EP-0 single-line pump?

14:07:55 25 **A.** Just for that pump, which is not a system. You have

Wilson - Redirect

1 to attach line and inject Orlacos and manifold blocks and
2 other things. That's just the mechanism that pumps the
3 grease to the lubrication points on the piece of equipment.

4 So I assume those other things are under revenue loose
14:08:19 5 parts. And that percentage is 86, 86.1 percent.

6 **Q.** Based on your experience handling numbers and in the
7 industry, and Groeneveld's own percentages on its gross
8 revenues, is there anything -- you have any comment or
9 observation about these reported figures of the -- I think
14:08:58 10 you said 13.9 percent and then the 86 --

11 **A.** I mean it certainly seems low, the percentage of just
12 the pump sale to the total, but I'm --

13 **Q.** Why?

14 **A.** Why? I'm not sure.

14:09:19 15 **Q.** Oh, no. Why does it seem low?

16 **A.** As I said, from Groeneveld's point of view, a full
17 system when we sell it, the portion of the pump to the total
18 selling price is more around 35 percent.

19 **Q.** What item in the complete system is the most expensive
14:09:42 20 item? Because you're talking about the manifold blocks or
21 distribution blocks and the timer and some additional
22 outside components, and then the pump?

23 **A.** Boy, that's a good question, and I wish I could answer
24 it. Generally, the pump is, you know, the most expensive
14:10:12 25 item, but as I say, it's not necessarily the -- it's not

Wilson - Redirect

1 the way I look at it. I look at it a complete system.

2 Q. You said there's something unusual about the way
3 they're recording this information, and I -- I'm just
4 wondering what it is. You and I haven't had a chance to
14:10:29 5 talk about this document before, but --

6 A. I'm saying it's unusual because they've got it in
7 categories. They have the pump separated from loose parts.
8 I'm not -- I'm not sure why I would take that out and
9 separately highlight it. That's the only thing that I said
14:10:48 10 was unusual.

11 Q. Okay.

12 Oh, yes, they calculated that percentage figure in
13 here. Okay. On cross-examination, there was questions
14 about the distributors and the cross over, whether
14:11:19 15 they're -- who of those identified distributors on this
16 document, 103, still handles Groeneveld products? Do you
17 recall those questions on cross-examination?

18 A. Yes.

19 Q. Okay.

20 So if you could just refresh my memory because it was
21 a little confusing for me.

22 I know you said Frank's Quality Services?

23 A. Can you put the list under --

24 Q. Yes, I can. Sorry.

25 A. Okay. The ones that I recognize that we currently

Wilson - Redirect

1 sell to Groeneveld currently sells to in the United States,
2 Frank's Quality Service also goes by FQS, and I think the
3 other confusion --

4 **Q.** The Michigan company I thought you said?

14:12:29 5 **A.** Well, North River Truck, which probably is a trucking
6 company, but owned by the Schmuck company, at least they
7 have an interest in that. They actually own Groeneveld
8 Michigan, our distributor, and we currently do business with
9 them.

14:12:54 10 **Q.** Okay. So now that we have this Lubecore supposed
11 actual number, I'm going show you X-2, Defendant's Exhibit
12 X-2, and show you in 2010, 2010 -- in 2010, how much did
13 they sell to Frank's Quality Service, Lubecore?

14 **A.** It appears they provided that company with something
15 but didn't charge them for it, but it was only \$208.

16 **Q.** Okay. Is that -- is that a full charge for a complete
17 ALS system?

18 **A.** Oh, no, no -- unless they're in the -- not that I'm
19 familiar with.

20 **Q.** Okay.

21 And here going back to 2009, I don't see -- I don't --
22 can you just confirm -- and for the record, it's Exhibit
23 DX-2 -- confirm Frank's Quality Service doesn't appear on
24 this new spread sheet they just gave us, correct?

14:14:18 25 **A.** That's correct.

Wilson - Redirect

1 **Q.** And here's 2011, which is DX-4. And can you just look
2 through this list and confirm that?

3 Frank's Quality Service isn't on here, so that isn't
4 that dual dealership thing you were asked questions about in
14:14:39 5 cross exam, correct?

6 **A.** Not between Lubecore and Groeneveld.

7 **Q.** Sorry. Not between?

8 **A.** Not between Lubecore and Groeneveld, no.

9 **Q.** So Franks's Quality Service isn't -- at least doesn't
14:15:04 10 appear on this list as buying any ALS products from in 2011,
11 according to Lubecore?

12 **A.** Not that's on this list, that's correct.

13 **Q.** Yeah, there are a few of them. And here's the other
14 company you described that was North River Truck?

14:15:29 15 **A.** Correct.

16 **Q.** So they got one there?

17 **A.** Correct, \$2362.

18 **Q.** Anything for North River Truck identified in 2010 as
19 per DX-3?

14:15:46 20 **A.** No.

21 **Q.** Okay.

22 Does Groeneveld permit and authorize its dealers, its
23 distributors to carry competing ALS products?

24 **A.** Our standard distribution agreement does not.

14:16:28 25 **Q.** There were -- there were a lot of questions about

Wilson - Redirect

1 other factors, other variables that could have had an impact
2 on Groeneveld's gross sales revenues from the ALS products,
3 other than Lubecore. You recall those questions on
4 cross-examination? Is Groeneveld asking for Lubecore to be
14:16:53 5 responsible for the entirety of its sales -- sales
6 difference between 2009 and '10 or 2011 for the entirety of
7 it?

8 **A.** No, I think it's -- we're taking sort of a
9 conservative approach. We don't want to -- we don't have
14:17:12 10 enough information to say our entire sales drop is due to
11 Lubecore. There are many variables.

12 **Q.** And in your direct examination -- in your testimony,
13 were you attempting to somehow convey the impression that
14 Groeneveld is entitled to every dollar in diminished sales
14:17:34 15 between 2009 and 2010 because Mr. Eissis entered the market
16 with Lubecore product?

17 **A.** No, the purpose of the schedules that I previously
18 provided was to get a general idea about the size of our
19 business over the years, and it wasn't meant to give the
impression that the reason -- the entire reason that our
20 sales have dropped is because of Lubecore, that -- that was
21 never --

22 **Q.** Just to kind of make this final point, the gross
23 revenues figure that you plugged into your contribution
24 margin calculation, where does that number come from? Where
14:18:21 25

Wilson - Redirect

1 did you get that number?

2 **A.** That is -- those numbers are the total USA -- I don't
3 think I have a hard copy of that. Just want to make sure
4 again.

14:18:42 5 **Q.** Well, let me --

6 **A.** Yeah. It's the total USA profit and loss statement
7 according to our books and records, which have been reviewed
8 by our auditors. I didn't say it was reviewed by the
9 auditors on here, but --

14:19:02 10 **Q.** Okay. That's on the contribution margin and the gross
11 revenues that you -- the gross revenue numbers that you plug
12 into this calculation to this formula, in order to calculate
13 the sales that Groeneveld said it would have had but for
14 Lubecore taking those sales, where did those numbers come
15 from?

16 **A.** It -- the purpose of this analysis was to a
17 contribution margin percentage so that it could be applied
18 against a number which was the Lubecore sales.

19 **Q.** So those numbers came from Lubecore sales figures
20 provided in the course of this lawsuit, correct?

21 **A.** On the other schedule.

22 **Q.** This one?

23 **A.** Sorry?

24 **Q.** 103?

14:20:03 25 **A.** The sample formula, the gross revenue, to be used to

Wilson - Redirect

1 calculate the loss sales damages would be the revenue from
2 Lubecore.

3 Q. And so these -- these numbers that appear on Exhibit
4 103, contribution margin that you apply is applied to whose
14:20:32 5 sales figures?

6 A. Our costs structure to Lubecore's sales figures
7 provided on that sheet.

8 Q. That sheet meaning the Lubecore document Exhibit 103?

9 A. Exhibit 103, yes.

10 Q. You were asked about the situation with Mr. Boronco?

11 A. Yes.

12 Q. And can you just tell the jury what happened with
13 Mr. Boronco?

14 I'm going to show you what we've marked as Plaintiff's
15 14:21:22 Exhibit 105-3 and ask if you recognize this as a termination
16 letter that -- that Groeneveld sent to Mr. Boronco?

17 A. Yes.

18 Q. And it's signed by whom?

19 A. Brian Covella.

20 Q. Who was he?

21 A. He was Transport Efficiency at that time, the director
22 of North American operations and chief operating officer.

23 Q. And did you see this letter and were you aware of it
24 in the course of Groeneveld's business?

25 A. Yes.

Wilson - Redirect

1 **Q.** And it's directed to whom?

2 **A.** To Louis Boronco.

3 **Q.** What's the date on that document?

4 **A.** December 1, 2009.

14:22:02 5 **Q.** And his -- is this one -- is this a Groeneveld
6 business record?

7 **A.** Yes, it is.

8 **Q.** Can you please read the narrative at least in the
9 first paragraph to the jury, please? Can you see it? Maybe
10 I'll make it bigger.

11 **A.** I don't know if I should take my glasses off or keep
12 them on. That's perfect. "Re: Termination of installer
13 agreement. Dear Lou, it's come to our attention that a
14 breach of your agreements with Groeneveld, you are now in
15 business with Lubecore. After treating you well for many
16 years and even arranging our business together so that you
17 were able to clear your old delinquencies, we were very
18 surprised to learn of your present actions. Given the
19 circumstances, effective immediately your third party
20 installer agreement is terminated, and we will no longer
21 accept your purchase orders. You may not hold yourself out
22 as being a Groeneveld dealer or installer or as having any
23 other relationship with Groeneveld. You are no longer
24 authorized to provide any services for us under Groeneveld's
14:23:14 25 warranties, and we will not consider any services you

Wilson - Redirect

1 provide for payment. We demand that you immediately return
2 to us all Groeneveld property in your possession --
3 position -- possession, sorry, including all kits, parts,
4 and sales literature. Finally, we must remind you of the
14:23:31 5 confidentiality noncompetition and other obligations that
6 survive your various agreements which will be enforced.
7 Based on agreement, the foregoing applies to you and your
8 entities. We will pursue all available remedies in the
9 event of any breaches."

14:23:59 10 Q. Thank you.

11 You were asked questions suggesting that there was
12 customer -- there were customer -- poor -- customers had
13 poor experiences with Groeneveld, and I like to ask you to
14 tell the jury about warranty claims on Groeneveld ALS
14:24:25 15 products. And if you could just explain to them?

16 MS. ZUJKOWSKI: I think this is outside the
17 scope of my cross. But --

18 THE COURT: Is there an objection?

19 MS. ZUJKOWSKI: Objection.

14:24:36 20 THE COURT: Sustained.

21 BY MS. MICHELSON:

22 Q. Are you aware of any evidence that there has been
23 expression of dissatisfaction or complaints or experience
24 with Groeneveld's by the end users of these products?

14:24:50 25 A. Well, I -- no company is ever perfect. I'm sure

Wilson - Redirect

1 somewhere out there will be examples, you know, where we can
2 meet everybody's expectation but I absolutely assure you
3 from a warranty cost point of view, it's such a small number
4 in our day-to-day operations that we don't create even a
14:25:11 5 separate cost for it because the product reliability and
6 quality is there, and there's not that many dollars spent
7 with correcting a customer dissatisfaction with our product.

8 **Q.** The -- there were questions on cross-examination about
9 the fact that Groeneveld isn't suing distributors or third
14:25:48 10 party installers, and I'd like to direct your attention to
11 that area of inquiry. And my question is that's true,
12 right, Groeneveld isn't suing those people, is it?

13 **A.** No, we are not.

14 **Q.** So why are you going after the manufacturer of the
14:26:08 15 product, the Lubecore product, the guy who brings it into
16 North America and distributes it here in North America?

17 **A.** This claim is about trade dress, and unfair trade
18 practices, and it's not the distributor who has manufactured
19 that product and the program. It's Lubecore International,
14:26:52 20 and that's why our dispute is with Lubecore.

21 **Q.** There were questions about the website, the
22 autolubeparts.com website and the Fuel Systems website on
23 cross-examination. I'm just directing your attention to
24 that area of inquiry. And you start -- you didn't get a
14:27:19 25 chance to fully explain what the point of that -- of that --

Wilson - Redirect

1 what the point of that is in connection with the issues
2 here.

3 Can you finish your answer for the jury, please?

4 **A.** I -- I'm not sure honestly, unless you read it back to
14:27:46 5 me, exactly what the question was and where I sort of
6 stopped. So.

7 **Q.** All right. Well, let me -- let me try and phrase my
8 question better for you because that could be my fault.

9 What's the relevance of the information on the
14:28:13 10 Lubecore distributor web sites where you put the word
11 Groeneveld into a search bar and a picture of a Lubecore
12 pump comes up?

13 **A.** The relevance is that it's damned confusing.

14 **Q.** Similarly, if you type into a Google search bar, or
14:28:35 15 beginning search bar I suppose or any other search engines,
16 Groeneveld, or Groeneveld grease systems or Groeneveld
17 greasing systems and distributor website comes up. What's
18 the relevance of that?

19 **A.** Again, if somebody probably like me who doesn't know
20 how you get your name to the front page and to the sponsored
21 list types in it because they're looking for Groeneveld and
22 it comes there, then you know they're going to say, Okay,
23 there, I'm -- hey, must be in the right spot. I'm in Ohio.

24 **Q.** You know, and I -- close to done actually. This pump
14:29:16 25 that's in front of you on the table, let -- when did you

Wilson - Redirect

1 start with Groeneveld?

2 **A.** In August of 2006.

3 **Q.** Okay. And were you ever asked questions about this
4 particular pump before being on the stand here today?

14:29:36 5 **A.** No, I wasn't.

6 **Q.** Were you ever shown a picture of it in any of the
7 other proceedings in the case?

8 **A.** No, I wasn't.

9 **Q.** Okay. Do you know why they would show this to you
10 instead of Willem VanderHulst until after he goes back to
11 Italy and can't explain where in the Groeneveld history this
12 thing fits in?

13 Let me rephrase my question. Will Willem have had
14 more information about this particular item than you do?

14:30:04 15 **A.** Oh, absolutely.

16 **Q.** And what about Martin Vermeulen, their own witness,
17 whose trial testimony has already been committed to video.
18 Do you think he might have some more information about this
19 particular pump and where it fits in in the history of the
20 company than you?

21 **A.** Yes, I do.

22 MS. MICHELSON: I don't have any further
23 questions.

24 THE COURT: Anything further?

14:31:04 25 MS. ZUJKOWSKI: Unfortunately yes, but I'll be

Wilson - Redirect

1 brief.

2 THE COURT: The jury's beginning to understand
3 after a week when the lawyer says I'll be brief, they should
4 sit back and get a cup of coffee.

14:31:15 5 MS. ZUJKOWSKI: I think I stuck to my word on
6 it.

7 THE COURT: Okay. You have. This was the
8 witness who was going to take 20 minutes, remember?

9 (Laughter.)

14:31:25 10 THE COURT: That was 24 hours ago.

11 (Laughter.)

12 RECROSS-EXAMINATION OF GAIL WILSON

13 BY MR. ZUJKOWSKI:

14 Q. Gail, you just testified you're not trying to
14:31:32 15 attribute all of Groeneveld's loss sales to Lubecore, right?

16 A. Correct.

17 Q. Let's just look at 2009 to 2010 on **began document
18 your counsel's been using. Not an exhibit in this matter,
19 but is that in focus enough for you in the upper right-hand
20 corner?

21 A. Yep, that's clear.

22 Q. Approximately, and we've helped you with the math
23 here. What are Groeneveld's last sales from 2009 to 2010?

24 A. This is -- these are the total sales for the U.S.,
14:32:21 25 including all of our U.S. entities and all of our products.

Wilson - Redirect

1 And the sales in 2010 were \$6,486,000, and the sales in
2 2009, \$6,586,000. So the math on that is roughly \$100,000
3 difference.

4 **Q.** All right. So the total for -- you just said on
14:32:51 5 everything, too, all three entities in the U.S. and all
6 products, too, is it?

7 **A.** Yes.

8 **Q.** Is \$100,000?

9 **A.** Yes.

10 **Q.** That same year, Mr. Eissis sold four times that much
11 in Lubecore pumps, ALS products alone, right, associated
12 parts?

13 **A.** Yes.

14 **Q.** So you're actually, every last dollar and then some,
14:33:25 15 you're putting right on here?

16 **A.** As I mentioned, the total sales on that previous
17 schedule that you showed me is for all of the U.S., for all
18 of our products, and there are market fluctuations in the
19 various industry sectors. I believe there was another
20 schedule which was just the EP-0 sales, and it -- it will
21 show a little bit of a different trend than the total sales.

22 **Q.** Will it give us a lower number? You want to help me
23 find that page if you want to look at that number?

24 **A.** Yeah, it's the -- at the previous -- it was deposition
14:34:19 25 Exhibit 47.

Wilson - Redirect

1 **Q.** Rather than try to pull up the document, what number
2 you think is a fair number for the sales decline for that
3 year, EP-0 pumps? We'll use whatever number you want.

4 **A.** Could you show the left-hand side of your schedule on
14:34:45 5 the monitor, please?

6 **Q.** The same page we were on?

7 **A.** Yeah, that page that you had up. Sorry, just wanted
8 to see the headings. No, the Lubecore document. That's the
9 one.

14:35:00 10 So as I previously mentioned, if there's anything
11 that's in sort of Florida, the northwest, United States,
12 Utah, which are not part of the selling territories, unless
13 it's a national account for trans -- Groeneveld Transport
14 Efficiency, Inc., then I believe what's fair is that all of
14:35:28 15 those sales of \$474,985, if that's the full extent of the
16 Lubecore sales, minus \$45,925 for Florida, would be lost
17 sales for Groeneveld Transport Efficiency, Inc.

18 **Q.** You're still talking about a number that's four times
19 Groeneveld's total loss sales for that year?

14:35:53 20 **A.** No, it is not. Sorry if I -- I will wait if you want
21 to find that exhibit. It -- I'm not --

22 **Q.** I guess I am trying to understand where is it at
23 the -- I'm sorry, where are the discount, where is the
24 discount coming from? How is your approach conservative?

14:36:14 25 **A.** Sorry. I didn't hear what you said.

Wilson - Redirect

1 **Q.** Where -- when you say that you're not trying to
2 attribute all of your lost sales to Lubecore's entry into
3 the market, and that rather you're taking into consideration
4 all of the other things we talked about, the possibility of
14:36:29 5 downturn in the economy, other competitors, price
6 competition, you know, everything else, where is it in this
7 analysis that those things are given some kind of discount
8 factor when coming up with your damages number?

9 **A.** I don't think Lubecore can impact the downturn in the
14:36:49 10 economy, so maybe I'm not understanding the question, but if
11 you pull up this exhibit.

12 THE COURT: Look, can you answer her question?
13 Where is the discount?

14 THE WITNESS: The discount to?

14:37:01 15 THE COURT: For all the things she just said.

16 BY MS. ZUJKOWSKI:

17 **Q.** How are you factoring those concepts into your
18 analysis rather than just putting every last dollar of your
19 last sales on the Lubecore? How are you being conservative
14:37:14 20 to take those factors into account?

21 **A.** Because I didn't take into account sales that we make
22 to others that may have been decreased due to confusion
23 where the customer just simply doesn't purchase anything,
24 but I haven't discounted the Lubecore sales for those other
14:37:43 25 factors. I've discounted my own sales for those factors.

Wilson - Redirect

1 Q. Thank you very much. Thank you.

2 THE COURT: Is that it, Melissa?

3 MS. ZUJKOWSKI: Thank you. Yes, your Honor.

4 THE COURT: Thank you. You're excused. You

14:37:57 5 may call your next witness.

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Burke - Direct

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2 MS. MICHELSON: Yes, we call John Burke.

3 MR. ANASTOS: Objection, your Honor.

4 THE COURT: Come on up here. Stand up and
14:38:07 5 stretch, folks.

6 (Discussion at side bar off the record.)

7 THE COURT: Dr. Burke, raise your right hand,
8 will you, sir.

9 JOHN BURKE,

10 of lawful age, a witness called by the PLAINTIFF,
11 being first duly sworn, was examined
12 and testified as follows:

13 DIRECT EXAMINATION OF JOHN BURKE

14 THE COURT: Last time he was here, he was
15 Santa Claus. What did you do?

16 THE WITNESS: I will be again this year.

17 THE COURT: Doctor, tell us who you are.

18 THE WITNESS: Good afternoon. My name is John
19 F. Burke, Junior.

20 BY MS. MICHELSON:

21 Q. Dr. Burke, can you tell the jury where you live, what
22 you do for a living, where you're from?

23 A. Yes. A lot of questions. I live in Cleveland
24 Heights, Ohio. What I do is I am an economist, and I
14:41:42 25 practice that in a couple ways. I teach economics currently

Burke - Direct

1 at John Carroll University. And where am I from? I'm from
2 all over the place. I was born in Maine, I grew up in
3 Massachusetts. I went to school in South Bend, Indiana.
4 I've been married in Michigan, the first time. I taught
14:42:01 5 economics in Illinois. I taught economics in Indiana. Most
6 of my teaching career has been teaching economics in
7 Cleveland. First at Cleveland State University, and now at
8 John Carroll University.

9 **Q.** And, sir, can you just describe for the jury please
14:42:20 10 your educational background and -- thank you.

11 **A.** Yes, as I mentioned I grew up in the Boston,
12 Massachusetts area, went to primary and secondary schools.
13 Right after high school, I served a tour of duty in the
14 United States Navy, and that's where I got my best
14:42:36 15 education.

16 After the Navy, I attended Boston College, graduating
17 from BC in 1961 with an undergraduate degree in economics,
18 awarded a full scholarship to attend the University of Notre
19 Dame in South Bend, Indiana. Masters Degree in Notre Dame
14:42:53 20 in 1963 in economics. Continued working at Notre Dame and
21 was awarded a Ph.D., Doctor of philosophy in economics in
22 1967. Did some postdoctoral work at the University of
23 Chicago in the summer of 1967, but there was no degree
24 associated with that program in Chicago. That's my formal
14:43:12 25 education. But I'm still a student of economics still

Burke - Direct

1 reading, still trying to learn, still trying to work my way
2 up the curve.

3 Q. And do you also, as well as learning, do you also
4 teach?

14:43:24 5 A. I do. I've taught economics for a long time. First
6 at Notre Dame as a teaching assistant while I worked on my
7 own degree, and then at Indiana University as an instructor
8 in economics, and then at Eastern Illinois University in
9 Charleston, Illinois, as Assistant Professor of Economics.

14:43:44 10 And then the late 1960's, I was off on a job with a
11 brand new school in Cleveland, Ohio, the Cleveland State
12 University. When I arrived on that campus, we were teaching
13 in temporary buildings. I'm amazed what has happened to
14 that place. I taught there for 27 years, retired from
14:44:03 15 full-time teaching in the 1990s, with 37 years of public
16 service. They let you buy your military time and other
17 stuff like that. I was out of the classroom for a couple of
18 years, and then in the late 1990s John Carroll University
19 called, and I now teach one course a semester if the
20 university needs it.

21 Q. And, sir, can -- I know you've written a lot, but can
22 you just describe for the jury some of the articles or
23 publications you've authored that relate to the work that we
24 asked you to do in this matter?

14:44:38 25 A. Yes.

Burke - Direct

1 Most of my writing was done when I was a younger man.
2 Writing is a younger man's job in the academic life although
3 I did get something published last year. But a lot of it
4 was on state and local taxes, impact on the citizens when
14:44:54 5 the Government taxes us, impact on our citizen when the
6 Government spend that taxpayers' money, I also have
7 published in the matters area of how to evaluate a business,
8 published in the area of the economic relationship between
9 law and economics. I've also done a lot of work in how
14:45:14 10 families spend their money, but as I said, most of those
11 publications were done when I was a younger guy. I
12 published something in the 1990s and published something
13 last year. But, most of it was done when you're a young
14 man. As a young man's job.

14:45:29 15 **Q.** And instead of going through more of your professional
16 achievements and associations, I'm going to just slow you
17 what we've marked PX 140. Thank you. 140-1 through 140-8.
18 And can you confirm please for the jurors that this is a
19 copy of your curriculum vitae?

14:45:58 20 **A.** It is it's my resumé.

21 **Q.** Thanks.

22 So, Dr. Burke, what did we ask you to do in this case?

23 **A.** The assignment you gave me was to look at a company,
24 and determine the relationship between its costs, how much
14:46:22 25 of its costs to fix, how much of its cost is variable and

Burke - Direct

1 you want to determine that so you would know that if you add
2 an additional dollar of sales or \$1 million additional sales
3 at the top of this company, how much flows out of the
4 company, that would be variable costs, how much stays with
14:46:41 5 the company, that's profit and the contribution to fix cost
6 that was part of my assignment. My other assignment was to
7 look at sales of alternative company, and to say if the
8 first company had been able to make the sales of the second
9 company, what impact would that have on the bottom line of
14:47:02 10 the first company.

11 **Q.** And the first company just so we're all clear, the
12 first company being Groeneveld, the plaintiff in the case,
13 the second company being Lubecore the Defendant in this
14 case?

14:47:12 15 **A.** Yes, ma'am.

16 **Q.** And were you able to do that work?

17 **A.** Yes, ma'am.

18 **Q.** Now, the first -- before we get to what exactly what
19 you did in this case, can you just explain to the jurors
20 what an economist does and how an economist is able to do
21 the assignment that you have just described?

22 **A.** Yes, sir.

23 **Q.** Thanks.

24 **A.** An economist is a social scientist, an economist -- we
14:47:40 25 look at people and businesses and entities and say how does

Burke - Direct

1 this business earn its income. If you're a person, do you
2 put your time out for a wage or a salary or a commission?
3 How do you earn a living. If you're a building, how do you
4 earn your rents? If you're a business how do you earn your
14:48:01 5 profits? And on the other side of that, once you have
6 earned your living, once you've earned your money, how do
7 you turn around and spend that. If you're a person spending
8 it on food clothing shelter transportation recreation
9 medicine. If you're a business, how much do you spend to
14:48:18 10 run the business, what it should cost of goods sold, what
11 are your inventories, what are -- where does your money go
12 and how much is left over and by the way, it all goes
13 somewhere because there is only one thing to do with money.
14 You spend it. That's the only thing you can do with money.
14:48:39 15 Even if you use it to buy assets, you got to spend it. If
16 you tuck it under the mattress, does you no good at all.
17 I've got to buy something with your Monday I so whether
18 you're a person or a business or a partnership or
19 corporation, you take in monies from your economic activity
20 and turn around and you disburse those monies for your
21 economic activity economist is a social scientist that look
22 at that and see what are the relationships, what are the
23 determining factors in that.

24 **Q.** And are you prepared today to explain to the jury what
14:49:12 25 you did and tell us what your economic loss calculation was

Burke - Direct

1 in terms of dollars lost to Groeneveld in connection with
2 the sales that went to Lubecore instead of Groeneveld in the
3 past and then going forward?

4 **A.** Yes, ma'am.

14:49:27 5 **Q.** Now, have you testified in court on these sorts of
6 matters before?

7 **A.** Yes, I have, on many occasions.

8 **Q.** And any particular side you usually show up for or how
9 does that work?

14:49:42 10 **A.** I -- usually I testify on behalf of the plaintiff.
11 They're the ones who have the responsibility of showing that
12 there's been a loss. However, frequently, I will testify
13 for the Defendant also, and on several occasions, I've also
14 testified for the Court. I've been appointed as a
15 court-appointed expert. One case involved -- there was a
16 night club down in Kentucky called the Beverly Hills supper
17 club, burned down about 30 years ago, and 286 people were
18 killed or injured. Federal Judge Rubin in Cincinnati asked
19 my partner and myself if we would undertake an economics
20 analysis how much the 286 people could have earned had they
21 not been killed or injured. In another instance, another
22 federal Judge in bankruptcy court in Cincinnati, there was a
23 business called eagle pitch which was one of the asbestos
24 type companies, the Judge asked us to look at the -- what he
14:50:44 25 called the futures, these were the people who would come

Burke - Direct

1 down with one of the asbestos diseases, ten, 20, 30 years
2 into the future and what would be the cost associated with
3 helping them.

4 Another case involved a train that tipped over, a
14:51:02 5 train tipped over and a lot of gases of some kind came out
6 of the train and they evacuated a couple counties in south
7 Western Ohio, Miami County and I forget the other one.

8 Putnam maybe, I forget and again, these businesses were
9 closed down for about three days, and the Judge asked us to
14:51:20 10 look at the economic impact so I worked for the courts and
11 several occasions also. But economics is economics, I mean
12 if you ask me how much is two and two or if you are
13 colleague asked me how much is two or two or the Judge asked
14 me two or two the answer is the same.

14:51:35 15 Q. And sir, when you do this kind of work, this expert
16 work that you described, are you compensated for the time
17 that you spend?

18 A. That's the first law of economics, nothing's free.

19 Yes, I am compensated. And very nicely by the way.

14:51:51 20 Q. And are you being compensated in connection with this
21 case as well?

22 A. Yes, ma'am.

23 Q. And?

24 A. I will send you a bill.

14:51:58 25 Q. I'll send -- I'll tell you who to send it to, not me.

Burke - Direct

1 And what -- what rate are you being charging here?

2 **A.** For testimony for courtroom testimony, I sent you a
3 letter I believe and I said I'd charge you \$1200 to come to
4 court and testify on your behalf. Also in that letter, I
14:52:19 5 said when I back in my office working on my reports I'm
6 going to charge you \$475 an hour.

7 **Q.** Okay. And about how many hours do you have of work
8 into this matter up until coming to court today?

9 **A.** I don't know, and I don't know how many hours my
14:52:34 10 assistants had in it either.

11 **Q.** Sir, so can you just explain to the jury what you did
12 to calculate the economic losses in this matter?

13 **A.** Yes.

14 **Q.** Groeneveld's economic losses in this matter?

14:52:53 15 **A.** I noticed an easel here. Can I use that easel will.

16 **Q.** Yes we brought it for you.

17 THE WITNESS: May I, your Honor.

18 THE COURT: Sure.

19 **Q.** Okay, Doctor?

14:53:48 20 **A.** Thank you.

21 The assignment is to figure out how much of
22 Groeneveld's revenues, I go through an impact the bottom
23 line. And impact their costs. Well, there's a couple of
24 simple formulas you want to look at. It is a definition
14:54:09 25 that total revenue is equal to total costs plus or minus

Burke - Direct

1 profit, and I put plus or minus because it doesn't always
2 work out the way you want it to. Sometimes profits are
3 negative.

4 That's a formula that has to hold true.

14:54:32 5 MS. MICHELSON: Help is on the way.

6 THE WITNESS: That has to be true. It's a
7 definition.

8 Now, the question I don't look at is if there's a
9 change in revenue, if there's a dollar more of sales,
10 \$10,000 or \$100,000 or \$1 million or \$10 million more in
11 sales, what impact will it have on this company. Well, so
12 it's a change in revenue is going to be a change in total
13 costs plus or minus a change in profit. Well, it cost here,
14 there are two components every cost. There are fixed costs,
15 and there are variable costs. Fixed costs are costs that
16 you shot run don't change. If you own a building, and your
17 accountant told you it appreciates by \$60,000 per year, then
18 whether you produce one item in that building, or a million
19 items in that building, the appreciation is \$60,000, that's
20 a fixed cost.

21 There are other costs that are variable costs. If you
22 run the plant 24 hours a day, your electrical bill is
23 probably going to go up. If you have more laborers, then
24 the labor bill will go up and the payroll taxes associated
25 with that.

Burke - Direct

1 If -- so I want to divide the cost right here into two
2 types, fixed costs and variable costs. So now my formula is
3 total revenue is equal to fixed costs plus variable costs
4 plus or minus profit.

14:56:08 5 That's all I have to figure out because now, I have to
6 collect data. I have to collect data on what this total
7 revenue has been, and so you look back historical look at
8 profit areas profit and loss statement, a profit and loss
9 statement will tell you the revenue and you look at that for
14:56:28 10 over a period of years, the profit and loss statement is
11 also going to tell you all of the costs associated with this
12 company, and that profit and loss statement is going to tell
13 you the profit. Positive, negative, zero.

14 I need help right here. Some fixed costs are all as I
14:56:47 15 mentioned appreciation is August if you had borrowed a
16 \$million at the bank at 10 percent you open \$100,000 a year
17 and you produce one are a million, that's a fixed costs.
18 (Fixed) some fixed costs are obvious, some fixed costs are
19 not obvious. I need help from the company to make this
20 determining and what you do is take all these numbers, you
21 put it in, my next step is I want to find out what is the
22 relationship between this total revenue, fixed costs is
23 going to be constant, so I really want to find out what is
24 the relationship between fixed costs, and variable costs.

14:57:29 25 Variable costs doesn't stay with the company, variable

Burke - Direct

1 flows right out the door you don't get to keep the variable
2 costs so I go back and I collect data on the company, I
3 collected five or six years of information on revenue,
4 collect the information on five or six years of all of the
14:57:46 5 costs associated with this company, and then I take all that
6 information and I put it into statistical regression. I try
7 to determine what is the relationship, in a regression is a
8 mathematical formula that tells me what the relationship is.

9 Just for example, you may put on this axis a number of
14:58:09 10 cigarettes smoked you may put on this axis the rate of lung
11 cancer or something else, and when you go out and collect
12 the data, you're going to find that the data looks like
13 this. It's all over the place, the data here there
14 everywhere, it is -- you've got -- you know, you got
14:58:28 15 somebody smoked one pack of cigarettes, cancer, and almost
16 everybody who smoked camels and lived until 86. But, when
17 you collect all of the data, put it through a mathematical
18 relation ship, called the regression analysis you find that
19 here is a trend line and that trend line will say for each
20 one more pack of cigarettes you smoke on average, the cancer
21 rate jumps from here to here and it's -- by the way that's a
22 mathematical relationship, it's not a causal relationship
23 just math.

24 This line has to fit two categories, one you notice
14:59:15 25 there are numbers above the line numbers below the lines

Burke - Direct

1 numbers below, if I sum all of those deviations from the
2 trend line, some of that has to be zero. That's what an
3 average is, isn't it? An average -- you have some above,
4 some below, all deviation s are zero. This line has enough
14:59:38 5 characteristics in which -- because some of the deviations
6 are above the line, some of the deviations are below the
7 line, negative. If I square them, get rid of the negative
8 so the second characteristic, this has to be the least or
9 the smallest of the squared numbers and that's why this line
15:00:01 10 is called the line of least. I put that through my
11 regression. I did that for this company, and I found when I
12 put through all the numbers that the relationship it turned
13 out to be that it changed in total revenue most of it was
14 going to disappear in the form of fixed costs. Aim going
15:00:25 15 round this out roughly 65 percent is going to disappear in
16 fixed costs -- excuse me in variable costs and approximately
17 35 percent was going to stay in the form of contribution to
18 the bottom line profit and to help pay for fixed costs.
19 Actually the number I got from my regression was 36.53
20 percent. So put a dollar in at the top of the company to a
21 revenue, then the company is going to benefit to the tune of
22 36 and a half cents. A billion dollars in and it's going to
23 benefit to the tune of 365,000 and some odd pen nice.
24 So that's the first half of my assignment. The other
15:01:20 25 half of my assignment was to look at a variety of sales that

Burke - Direct

1 had been undertaken by a different company, in this case
2 Lubecore. I had information sent to me from the attorneys
3 that in the year of 2010, that the portion of the sales that
4 would have affected the Groeneveld was \$816,617, and in
15:01:56 5 2011, the annual projected amount was \$1.6 -- \$1,633,235 I
6 then applied my 36.5 percent, and I got the damages at
7 Groeneveld had suffered for the first couple of years, were
8 about \$298,000 for this year and about \$894,000 in the
9 second year. That brought plea up to now. I then turned my
15:02:43 10 attention to the future. In the future I've got three other
11 problems I have to deal with. One problem I had I have to
12 deal with is growth. Sales of Groeneveld going to grow in
13 the future? Well, I looked back at the producer price index
14 for this type of industry, and I thought that the growth of
15:03:07 15 prices, assuming though growth in form, the growth of prices
16 was going to be about 3.6 percent per annum so I assumed
17 that Groeneveld's gross revenues was going to grow by that
18 change in prices. Change in prices by the way comes out of
19 the producer price index, I looked at the producer price
20 index between 2003 and up through August of 2011, and this
21 averaged 3.6 percent, some more, some less as to average.

22 The second problem I have is if there is money due and
23 payable in the future, like if I owe you \$1 million, next
24 year.

15:03:52 25 Q. You can send that to me along with the bill?

Burke - Direct

1 (Laughter.)

2 Q. But if I owe you -- \$1 million next year, and I went
3 up to her today and said I'd like to get out of my debt
4 today, I don't want to offer her a \$1 million because I'm
15:04:11 5 overpaying her. She can take my million and just out of any
6 bank and earn a small amount in today's world but earn 1
7 percent on that.

8 Now, 1 percent on a million is what, \$10,000, so I
9 think I'll say to her would you like to have \$990,000 today
15:04:31 10 or do you want to wait a year and I'll give you the \$1
11 million. The economist is going to say those two amounts
12 one year time period at 1 percent interest are the same
13 amount.

14 If the debt is owed two years from now and there's two
15 years, not only \$10,000 a year but compounding in there too
16 and if it's three years, if it's four years, five years, so
17 for each year in the future, I have to bring it back to
18 present value. What it's worth today.

19 Now, usually when you look at present value for a debt
15:05:09 20 between two people like you and me, you look at a safe
21 investment, you look at a safe investment like the United
22 States Government, that's the safe investment (bond) and
23 that interest rate today is very low, .6 of 1 percent, even
24 for two or three or four years, it only gets up to 2 or 3 or
15:05:28 25 4 percent. However, we're looking at a business. A

Burke - Direct

1 business is subject to a lot more risk than the United
2 States Government is. It's just not as safe an investment.
3 So the rate of interest that I use to bring 2012 back to
4 today, 2013 back today 2014 back to today I use 20 percent
15:05:52 5 and that accounts not only for that rate of interest, it
6 accounts for risk, risk of bankruptcy, risk of recession,
7 all kinds of risks. All used very high rate.

8 Third thing I have to look at is is this problem that
9 Groeneveld has encountered, is it going to go on forever, or
15:06:14 10 is it going to end today or is it going to end a year or
11 two, three, four five years from now, well, I looked at
12 several years in the future, and I was in have had that the
13 problem would probably disappear in about the fifth year.
14 So for the next several years, I have to say how much is
15 Groeneveld going to lose in the future before the problem
16 totally goes away. So as I mentioned, maybe if you just put
17 up Page 10 of my report?

18 MS. MICHELSON: I got it here, sir. 10 or.

19 THE WITNESS: Ten, Page 10.

15:07:22 20 There we are, so in the -- I started in 2010, I did
21 not have Lubecore's figures for 2009, so I made no judgment
22 on that.

23 But in 2010, I thought the lost sales would be
24 \$816,000, the contribution margin would be 36.53 therefore,
15:07:46 25 Groeneveld has lost \$298,000 to pay profits and other fixed

Burke - Direct

1 costs. The next year I thought Groeneveld would have lost
2 about \$1,633,000 in sales, applied the 35 percent, and you
3 get \$596,000 in lost contribution margin, add those two
4 together and the problem ends right now in 2011, the losses
15:08:16 5 would be \$894,000.

6 If it continues for five years, you could see the year
7 figure, first of all, in the first column, you can see sales
8 dropping very rapidly. I have them dropping very rapidly
9 because I grew them by the small amount, only price
15:08:36 10 increases of 3.6 percent. No -- no additional quantity.
11 And I discounted them at a very high rate of interest.

12 And that's what you get for result of those figures
13 dropping 1.4, 1.2, 1.0, 9, 7, 6, and drop very rapidly
14 mostly because of the high discount rate, and if you add
15:08:59 15 them up until the fifth year, I have cumulative chart off to
16 the very far right here, there, accumulator, if you -- if
17 the problem ends in fifth year, the total losses \$2
18 ,856,326. I put all of this in a report. And I sent it off
19 to you.

20 **Q.** Okay, Doctor. Thanks. You are here' my question for
21 you. The first question when you did your first part of
22 your Saturdays call regression analysis, what is the data
23 that you need and did you get it?

24 **A.** Yes, if I didn't get it I could not have done that.
15:09:41 25 I asked for statistical data for at least five years.

Burke - Direct

1 I like to have five years.

2 Q. How much did you get?

3 A. I got 6, 2005, 6, 7, 8, 9 and 10, and I have the
4 revenue data, and I had all the cost data.

15:09:57 5 Q. And that data was whose data?

6 A. Groeneveld's data.

7 Q. And do you recall it being provided to you in a CD?

8 A. Yes. I got it in an electronic form, I got a couple
9 of disks here, I got it in electronic form, the easiest way
10 to transmit it but it's standard accounting stuff. A profit
11 and loss statement from a company.

12 Q. And were you provided with all the information from
13 Groeneveld that you felt you needed to reasonably calculate
14 the -- to do your regression analysis?

15:10:33 15 THE COURT: Doctor, you can sit back down if
16 you want, you can sit back down.

17 THE WITNESS: Thank you.

18 THE COURT: If you're more comfortable
19 whichever way you want to do.

15:10:44 20 THE WITNESS: Thank you, your Honor.

21 I did get all the information I need, you provided me
22 with an opportunity to talk to -- on the phone to people
23 from Groeneveld, and I especially needed some help as I
24 always do in that area, separating out what is fixed costs,
15:10:58 25 what is variable costs, not always easy to identify.

Burke - Direct

1 **Q.** Why -- why do you need input from the business people
2 on that specific topic?

3 **A.** I will never know their business as well as they know
4 their business. So I need help in having some things
15:11:17 5 explained to me.

6 The relationship between economics and business, the
7 economist is kind of a business person scientist. It's kind
8 of analogous to the relationship between engineering and
9 physics. And so now we're into the practical nitty-gritty,
15:11:37 10 I need help from somebody in the company to explain to me
11 just -- as I said some fixed costs are obvious, some are
12 not.

13 **Q.** Was there anything in the Groeneveld financial data
14 and information that was delivered to you that raise any
15 concerns about reliability or accuracy or anything along
16 those lines?

17 **A.** I'm not a CPA, I'm not an accountant and aim certainly
18 not an auditor. I accepted what you told me as truthful.
19 I'm -- I'm one of those people who believes lawyers.

15:12:14 20 **Q.** And?

21 THE COURT: You should. His wife is a lawyer.

22 (Laughter.)

23 THE WITNESS: Yeah, I better.

24 **Q.** And then when you did your other part of the
15:12:24 25 calculation, did you accept as accurate the information that

Burke - Direct

1 the Lubecore lawyers provided concerning Lubecore's sales
2 numbers?

3 **A.** Yes, ma'am. You provided me with a document that has
4 got a reference number of Lubecore 0000, five zeroes, 296
15:12:50 5 and I relied on that document.

6 **Q.** And just so -- just so the record is clear, that's --
7 is that this item that we have here, is it 103? If you need
8 me to walk you up a copy, I can.

9 **A.** Yes.

15:13:15 10 **Q.** Now, were there any 2009 numbers identified here?

11 **A.** No, ma'am. This at the top says 2010 actual, and 2011
12 projected.

13 **Q.** Okay. And -- oh, that's here. And when you -- and
14 when you inserted the Lubecore sales figures into your
15 analysis to come out with a numbers that you've testified
16 to, the damage numbers that you've testified to, did you
17 include all of the figures here in Exhibit 103 or was there
18 a selection?

19 **A.** It was a selection. I was informed by you and your
20 colleagues that there were just four items to look at. As
21 you noticed, the total sales in 2010 listed as a million 42.
22 I only used 816,000 of those one million, 42, about 80
23 percent and I used the company c, the company identified
24 here as C, I used the company that was identified as I, J
15:14:28 25 and K, I used four companies.

Burke - Direct

1 **Q.** And, sir, so if in fact additional companies should
2 have been included, your final calculations would be greater
3 in terms of the actual lost profit damages, lost sales
4 damages?

15:14:48 5 **A.** Yes, a company that I didn't include by the way was
6 the first one, and that had sales of about 26,000. If you
7 added that to my figure, you should then take .365 of that,
8 and about a third of that would be about eight and a half
9 thousand and add that to the losses, yes.

15:15:10 10 **Q.** And why did you -- what part of your calculation
11 includes Lubecore's reported gross revenues for the selected
12 companies that you've identified in court here?

13 **A.** That would be in my report where I talk about there's
14 a footnote on Page 9 where I say I have added \$816,000 and
15 \$1,633,000. The four companies for 2010 and 2011, that's on
16 Page 9 of my report.

17 **Q.** I'm trying to get to that. That's marked PX 117- 1.
18 It's so hard to see.

19 **A.** Kind of hard to see but if you can pull up footnote C
20 says I've added \$816,000 for the first year, and \$1,633,000
21 respectively for the second year. So that would be 2010 and
22 2011.

23 **Q.** I'm not sure if I have the right table. Can you tell
24 me which table?

15:16:23 25 **A.** I think you were right.

Burke - Direct

1 **Q.** Oh, I was -- okay?

2 **A.** Yeah. Look at Note C.

3 **Q.** Oh, I see here. Okay. Thank you.

4 **A.** I added \$816,000 for 2010 and \$1,633,000 for 2011.

15:16:39 5 You had the right one.

6 **Q.** Okay, great.

7 What other information did you use, one other data did
8 you use in doing all these calculations that you've
9 described to come up with the numbers that you're presenting
15:16:53 10 here in court?

11 **A.** I think we talked about all the data I used. I
12 brought everything -- I brought my complete file with me,
13 and that's all the data I used.

14 **Q.** And, sir, did you have access before today to this
15 document marked Defendant's Exhibit X? Let me find it in my
16 stacks. Maybe somebody over there has got some -- got that
17 handy for me? Thank you.

18 Is this something you were provided access to before
19 today?

15:17:38 20 **A.** I saw that earlier today. I don't believe I was
21 provided access to that first sheet you had. I was provided
22 with a second disc of information on Friday of last week,
23 Thursday or Friday of last week and I started going through
24 that. Perhaps that document is in there.

15:18:01 25 **Q.** Okay. And you got that disk when? I missed it?

Burke - Direct

1 **A.** Today, I got -- I saw the document today. I got the
2 disk late last week and that document may be in had a disk.
3 I haven't seen it yet from that disk.

4 Q. How much information is on that -- provided that disk
5 that you got, I guess, Friday?

A. Say again.

7 Q. What's the volume of the data in that new disk that
8 you were provided?

A. A disk full.

15:18:30 10 (Laughter.)

11 Q. And, sir, I'm going to show you this page from your
12 report that we've marked Exhibit 10 9, and can you just tell
13 the jury what this shows?

14 **A.** Yes. Until today I did not know how long in the
15:18:52 15 future this problem might exist for Groeneveld so on the
16 next page, 2-A, I show every year, and on this page, I kind
17 of show a summary.

18 So if the problem ends this year, if by the end of
19 December, no more problem than then the loss toss Groeneveld
15:19:13 20 would be the top figure \$894,000.

21 o. Plus whatever numbers are relevant to the 2009 sales?

22 **A.** Right, I did not have 2009. So this is 2010 and 2011.
23 If the problem continues on for another three years, then
24 the amount of damages over that period of time, I believe,
15:19:34 25 would be \$2.2 million and if the problem continues for a

Burke - Direct

1 five-year time period, it would be \$2.8 million.

2 Q. And I want to make sure this is clear. In your
3 calculations, you are -- your economic analysis and re
4 regression analysis and statistical formulas, do you account
15:20:04 5 for variables, certain variables?

6 A. Oh, yes, that's -- that's why you use those
7 statistical regression because accounts for all of that.
8 Sales don't go up perfectly in a straight line. They go up
9 and down up and down and up and down and cost.

15:20:19 10 Costs don't rise or false. They go up and down and up
11 and down and that's what the regression does. It takes into
12 consideration all of those ups and downs and ups and downs
13 and gives us the line.

14 Q. And from this page in your report, this figure or
15 summary sheet, we've marked it Exhibit 110. I saw that
16 flying around up there in your hand and I thought maybe you
17 could describe for the jury what this particular figure
18 shows?

19 A. Yes.

15:20:50 20 On the upper pad if you could pull that up a little
21 (part).

22 Q. I can. I can try. Is this good enough or you want me
23 to --

24 A. That's nice. First off in the first column, the left
15:21:02 25 I show the years that I looked at it. I started in 2010,

Burke - Direct

1 and 2011, that's the data I had from Lubecore.

2 So 2012, 13, 14, are forecasts I made of Groeneveld's
3 additional sales because the second column says lost gross
4 sales. The third column I look at the variable costs. And
15:21:25 5 I'm going to round that off to two-thirds, 67 percent. And
6 then the next column has got the contribution margin at
7 about 35 percent. And the next column has the lost sales
8 accumulated so it takes year one, it adds year 2, years 3,
9 adds year 4, second to the last column is the variable costs
15:21:50 10 accumulator and the last column is the contribution margin
11 accumulator so if the problem ends right now in 2011, you
12 would add 2010 and 2011 together, and get the figure that we
13 just looked at.

14 Q. 894?

15:22:07 15 A. 894, yes. If.

16 Q. Plus the 2009 sales, I want to make sure we're
17 accurate on that?

18 A. Yes.

19 Q. Okay.

15:22:16 20 And continue on. I interrupted.

21 A. No, that is -- yeah, plus the 2009, which I didn't do
22 anything with.

23 Q. Right?

24 A. And then we Justin on the line. If we go on for
15:22:29 25 another year, another year, another year, another year, it

Burke - Direct

1 all adds up.

2 Q. And this --

3 A. Oh, and at the bottom. Page if you can keep that same
4 page there, that just kind of shows it in a graphic form
15:22:44 5 over a period of time. Same data, same information, but now
6 a picture.

7 Q. And now this table that was in your report, table 1,
8 what is-- what is this data?

9 A. This is the profit and loss sales grown for the period
15:23:09 10 of time 2005 to 2010, up at the top it shows the gross
11 sales, gross profit, it shows all of the costs associated
12 with that so, therefore we get down to the total operating
13 costs and the net sales margin, and then we get into the
14 management fees, and income from other things, and then we
15 get into net result after tax in the first several years
16 they were profitable, in the last few years, they turned
17 negative.

18 Q. Here, this table 4, we marked it PX-114, if you could
19 identify and describe the meaning of this item?

20 A. Yes, there takes the figures we just looked at in the
21 first column, gross sales for 05, '06, 2007 et cetera and I
22 report them, and I say, there comes back to that formula,
23 total revenue is equal to costs, plus, and so here I have in
24 the next column the fixed expenses of the costs of running
15:24:09 25 this company, how much of those costs got fixed?

Burke - Direct

1 By the way fixed is kind of a in the short run, this
2 instant, everything's fixed. You can't change a thing right
3 now. So by definition, everything is fixed. But, in the
4 long run, everything is variable because the long run is the
15:24:36 5 long enough period of time to change everything. So I'm
6 looking here at the short run. So in the short run, the
7 next column, I have those fixed expenses. That -- and I
8 also have the ordinary income. Those statements come right
9 off the statements of profit and loss that we just looked at
15:24:57 10 on the previous page. Therefore, the last column is the
11 residual mixed and variable expense because some expenses
12 are clearly fixed, some expenses are clearly variable, and
13 some expenses you're not quite sure about. So I put them
14 into this category column, mixed.

15:25:18 15 **Q.** And those -- those contingencies and those variations,
16 are three all worked into your economic and statistical
17 assessments and calculations?

18 **A.** Yes. And the reason I'm doing this is to put them
19 into my regression. I have to make one other change, which
15:25:34 20 is on the next page, Page 7.

21 **Q.** Do you have a table number?

22 **A.** Table 5, Page 7.

23 **Q.** And that is Exhibit 1 (15) Plaintiff's Exhibit 115?

24 **A.** Yes, right there. To get my regression to work
15:25:58 25 mathematically and give us a good figure, you got to take

Burke - Direct

1 inflation out of the equation, you don't want to be having
2 the variation, just do the prices.

3 So here, I put in the consumer price index, to stand
4 measure of inflation and I adjust all of my figures. So
15:26:18 5 they're now in constant dollars. That's a step I must take
6 in order to run the regression, which is on the next page,
7 Page 8?

8 **Q.** Table 6. I'm organized by table numbers?

9 **A.** Table 6.

10 **Q.** Here we go. We've marked that PX 116-1?

11 **A.** Could you bring it up a little, please?

12 **Q.** I can. I can try anyway.

13 **A.** There's my regression analysis. You can look at that
14 first number where it says multiple R and R square. If it
15 was a perfect fit, the number there would be 100 or 1. But
16 it isn't a perfect fit so the number is only .98. That's a
17 pretty good fit though and there I have the other
18 regressions. Down below I have my co-efficient, that line I
19 puts on the board is going to cross the Y axis at some point
20 and it's going to have a slope, and there they are right
21 there. The last two things, the T statistics and the P
22 value tell me if my data is statistically significant, and
23 it is.

24 And then right in the middle of that page, you can see
15:27:37 25 there is the contribution margin 36.53.

Burke - Direct

1 **Q.** Now, would have we've heard testimony from Ms. Wilson.
2 She's the CFO of the company, and she did her own
3 calculations and came up with the contribution margin of
4 around 40 percent. I don't know the exact figure right now.
15:27:57 5 Can you explain the reasons for that variation?

6 **A.** Perhaps. Did we look at the same years? Did she have
7 the same six years that I looked at?

8 **Q.** I believe that she testified about three years.

9 **A.** Well, right there, you would expect a difference
15:28:13 10 because we looked at different data.

11 And also you could expect a difference because I went
12 through this process of separating out the variable, the
13 fixed and the mixed. I don't know if she used that same
14 procedure or not. But, if you came in and said to me Burke,
15 I heard from Albert Einstein and he said that the number you
16 used was 36, and it really should have been 40, aid say I'll
17 accept what Albert says. It's within the range. My
18 number's not perfect. Could it be 37, could it be 35, could
19 it be 38? Yes, it could be. It's an average. And average
15:28:52 20 is before, and averages have below.

21 **Q.** And so it is the difference between say 36.53 percent
22 and the 40 percent statistically meaningful?

23 **A.** I don't think so, but I'd like to run it through a
24 statistical test to see it. It doesn't seem to me, but
15:29:11 25 again, I'd like to run it through a statistical test. There

Burke - Direct

1 are statistical tests that compare this number with that
2 number and see if the difference between them is significant.
3 You know how all the polls come out on the president and
4 they say the president's approval rating is what 2? It's 20
15:29:29 5 plus or minus 3, that means it could be 23, could be 17. My
6 numbers are the same way. Statistics are not perfect,
7 they're above and they're below. 40 is close enough. But,
8 I know what I did, I don't know what she did. And I like my
9 method.

15:29:49 10 Q. I'm going to show you now --

11 THE COURT: Here let's take a short recess.
12 Okay? Take about ten or fifteen minutes, folks. Keep in
13 mind the admonition.

14 (Thereupon, a recess was taken.)

15:45:25 15 Q. Hi, Doctor Burke, I'm going to be done pretty quickly.
16 I'm going to just show you now as we move through this, as I
17 said fairly quickly, if we could switch over to this Elmo.

18 THE COURT: Let's see here.

19 MS. MICHELSON: Thank you, your Honor.

15:45:51 20 Q. Figure 4 of your report that we marked as PX-124, and
21 if you can just explain what this -- what this graph
22 depicts?

23 A. Yes. That is in units, that's not in dollars. That
24 the -- left hand axis is in units and that's truck sales,
15:46:17 25 audit, audits for trucks.

Burke - Direct

1 **Q.** On an annual basis?

2 **A.** On an annual bases, starting in 2008, they dipped in
3 '082009, that's the impact of a recession, recovered in
4 2010, and they're expect today recover very nicely in 2011.

15:46:33 5 **Q.** And this -- this Figure 1 that appears in your report,
6 we marked this Plaintiff's Exhibit 121. If you can explain
7 to the jury what this depicts and where this fits in to your
8 opinion?

9 **A.** Yes, these are Groeneveld's actual sales for the time
10 period 2005 to 2010, and they show both the total U.S.,
11 which is the red figure, and they show Ohio.

12 **Q.** And then finally, Doctor Burke, finally, as to these
13 figures, in any event, figure 2 that we've marked as PX-122,
14 can you tell the jury what this figure depicts, and what the
15 relevance is of this item?

16 **A.** Yes. These show what would have happened to
17 Groeneveld sales if we had added the Lubecore sales to
18 Groeneveld. So here, we see Groeneveld sales, and then
19 adding in 2010, and 2011, the Groeneveld sales to the
20 Lubecore in both the United States as a whole, and the Ohio
21 component.

22 **Q.** And this Figure 2, it depicts what period of time?

23 **A.** 2005 to 2011, although the Groeneveld sales plus the
24 Lubecore sales are only for 2010 and 2011. I didn't have
25 2009, we don't know what 2012 is going to be.

Burke - Direct

1 **Q.** I see. I see and just so the record is clear, the
2 pink line, that is the Groeneveld -- that's the Groeneveld
3 sales in Ohio?

4 **A.** In Ohio, yes.

15:48:27 5 **Q.** And the yellow line adds in the Lubecore sales for
6 total Groeneveld USA?

7 **A.** Yes, so the yellow line is USA, the first part of it,
8 the first four or five dots, just Groeneveld, the second two
9 dots, 2010, and 2011 add Lubecore to Groeneveld.

15:48:47 10 In the red line, it's just Groeneveld. In Ohio, and
11 that's the first four or five red dots, and then in the last
12 two dots for 2010 and 2011, I add those portions of Lubecore
13 sales which were applicable. Not total Lubecore sales, just
14 the four companies that I looked at which I showed the jury
15 already.

16 **Q.** Just so I'm clear, the figure 2, it includes the
17 Lubecore sales as Lubecore reports for 2010 and 2011, but
18 not 2009 and before that because you didn't have that
19 information?

15:49:25 20 **A.** You are correct.

21 **Q.** Okay. Now, Doctor, I'd like you to assume, as to
22 these 2009 sales I'd like you to assume please the
23 Groeneveld has sales of an additional 200 units, meaning an
24 additional 200 ALS EP-0 systems, as reported by the
15:50:01 25 Defendant, and that each one of those additional units would

Burke - Direct

1 have brought in a 1500 price I would like you to then tell
2 us first what the additional gross revenue to Groeneveld
3 would have been if it had had those sales in 2009.

4 **A.** Well, 200 units times \$1500 is \$300,000.

15:50:29 5 **Q.** And then if you apply your contribution margin as you
6 determine the contribution margin to be based on the
7 statistical regression analysis that you described, what
8 loss sales damages you calculate in 2009?

9 **A.** If you had additional sales of \$300,000 and the
15:50:56 10 contribution margin was .3653, then the amount that would
11 have been added to your bottom line and to help you pay the
12 fixed costs would be \$109,590.

13 **Q.** Okay.

14 And that -- let me see if I can find it. I can use
15:51:32 15 this one. And that is in addition to -- I'm looking now at
16 PX-118-1. That would be in addition to the \$894,904, that
17 you calculated as present value, incurred loss net sales in
18 2009, 2010, and through today, 2011?

19 **A.** Yes, if you added that 109 to the 894,904, you'd get
15:52:10 20 \$1,004,494, 1,004,494.

21 **Q.** Okay.

22 MS. MICHELSON: Thank you, Doctor. I don't
23 have any further questions of the witness at this time.

24 THE COURT: Thank you. Cross-examination.

15:52:27 25

Burke - Cross

CROSS-EXAMINATION OF JOHN BURKEBY MR. ANASTOS:

Q. Good afternoon, Dr. Burke. How are you?

A. I'm well today. And yourself?

Q. Very well.

A. Good. Nice to see you.

Q. I've been practicing in Ohio for over 20 years and have heard of you for those 20 years and actually pleased to have a chance to meets you?

A. Aim pleased to meet you too.

Q. I'm Tom Anastos?

A. Yes you're with Ulmer and Berne, correct.

Q. Yes?

A. I am I've known your firm for a long, long time.

Q. Now I was confused about how much you're getting paid to sit up there right now, per hour?

A. Well to testify, I send people a letter and I say for testimony, for that day of testimony, I will charge you \$1200 to appear in court. When I'm back at my office working, I will charge for my time \$475 per hour, and then I have a lot of help from very able bodied people and I charge them at appropriate amounts too.

Q. Speaking of which, how many people helped you on this -- up on this -- preparing this report, preparing this data?

1 **A.** Well, in a narrow sense, there are six people at my
2 firm and I think four of them maybe five had input at some
3 point in time. That's the narrow answer. The big answer is
4 all of those teachers who taught me in the first grade and
5 the second grade and in college I oh, all of them.

6 Q. I didn't ask about them I was asking about the people?

7 | A.

8 (Laughter.)

9 Q. Because you don't charge the client for the --

15:54:17 10 **A.** No, I don't, but those -- those the people that I
11 really owe.

12 Q. And how much have you charged the plaintiff in this
13 case?

14 **A.** I don't think we've sent them a bill yet. As a matter
15 of fact, I was looking through my report this past weekend,
16 and I have a green sheet, I stand corrected. We billed them
17 \$24,150 the end of September.

18 Q. And that was for time through the end of September or
19 through the end of August?

15:54:45 20 A. Through the end of September, I think that bill has a
21 date on it of 9-27.

22 Q. Great. What I'm asking is a lot of bill 30 days in
23 advance. So is that bill that was for 30 days after the
24 work has been completed, if that bill is dated 9-27, is th
25 for work done through August 31st or through sometime in

Burke - Cross

1 September?

2 **A.** That is through 9-27. That's the way I bill.

3 **Q.** And how much was that again?

4 **A.** \$24,150.

15:55:16 5 **Q.** How many hours would you estimate you put in since
6 September 27th?

7 **A.** Maybe another ten, I worked a couple of hours this
8 past Sunday. I met with the attorneys on Sunday, met a
9 couple of hours then, math and rose an and I worked on this
15:55:39 10 case Thursday and Friday of last year.

11 **Q.** So you personally put in about ten?

12 **A.** That's a guess. I have to go back and look at my
13 records.

14 **Q.** Is that would add another \$5,000 on?

15:55:48 15 **A.** Approximately, yes, sir.

16 **Q.** So now we're up to close to \$30,000?

17 **A.** Yes, sir.

18 **Q.** Okay.

19 You testified that you have testified many, many times
15:55:59 20 as I think you said, or many times, was there only one many?

21 **A.** Say again.

22 **Q.** How many times did you say many when you testified?

23 **A.** I don't think I said but I will say, I didn't keep any
24 records for the first 25 years I did this but I would
15:56:16 25 estimate I testified in court 1800, 19001700 sometimes.

Burke - Cross

1 First time a lawyer called me it was 1966. I've been doing
2 this work for a long time.

3 **Q.** So you've been a damages expert for a living pretty
4 much?

15:56:32 5 **A.** That's how I earn most of my living. I charge John
6 Carroll a dollar a year. So most of my living is earned
7 working for lawyers.

8 **Q.** Let's broaden that a little bit. If you testified 17
9 or 1800 times on the stand, surely you've been deposed more
15:56:48 10 times than that?

11 **A.** About that, about another 17 or 1800 times. I tell
12 people I've told the truth more times than an eye Irish man
13 should have to.

14 **Q.** That's lovely colloquy doctor but can you just answer
15:57:03 15 my questions?

16 **A.** Yes, sir.

17 **Q.** Did you say that you were deposed another 17 or 1800
18 times in addition to the 17 or 1800 times you have testified
19 in trial?

15:57:14 20 **A.** I did, and as you probably aware, counselor, several
21 courts require to you keep a four-year average and I'll be
22 happy to send you a copy of that four-year testimony if
23 you'd like.

24 **Q.** No, I'm just -- just trying to understand apparently
15:57:29 25 you've been retained as an expert witness in terms of having

Burke - Cross

1 been deposed, X number of times and testified in trial X
2 number of times. What, at -- 3500 times in your career?

3 **A.** Testifying in court or in arbitrations or in hearings,
4 someplace where I've been put under oath, yes, sir.

15:57:48 5 **Q.** Approximately 3500?

6 **A.** That's a good guess, yes, sir. I didn't keep any
7 records for the first many years I did this.

8 MR. ANASTOS: Can we switch to the --

9 **Q.** Do you recognize this, Dr. Burke?

15:58:20 10 **A.** I do.

11 **Q.** What is it?

12 **A.** It's a letter I sent.

13 **Q.** First page of your report?

14 **A.** Yes, sir.

15:58:25 15 **Q.** And see this line in yellow here that says our
16 assumption included that but for Lubecore's action, all
17 relevant sales by Lubecore would have accrued to the
18 accounts of Groeneveld Ohio?

19 **A.** I see that.

15:58:43 20 **Q.** Is that the assumption you made in this?

21 **A.** I was asked to make that assumption, yes, sir are, for
22 the four companies, not all of Lubecore sales but for four
23 companies.

24 **Q.** Right.

15:58:53 25 **A.** Yes, sir.

Burke - Cross

1 **Q.** For everyone of those companies, you have assumed that
2 but for Lubecore's existence, but for its very existence,
3 those sales would have accrued to Groeneveld?

4 **A.** Yes, sir, I would phrase it -- I was asked to assume
15:59:06 5 that.

6 **Q.** You did assume it, didn't you?

7 **A.** Well, I was -- there's a slight difference.

8 **Q.** You were asked to assume it?

9 **A.** I was asked to assume it, and I accepted that
15:59:15 10 assumption.

11 **Q.** Okay?

12 **A.** Yes, sir.

13 **Q.** Do you know -- do you have any reason to believe that
14 that assumption is true?

15 **A.** Well, I took it as a possible. That's why I said I
16 was asked to assume. I wasn't there when these things
17 happened. So somebody had to tell me. I was asked to
18 assume it, I accepted it.

19 **Q.** So you don't know one way or another if any of those
15:59:37 20 sales -- any sale that was made by Lubecore was made as a
21 result of any customer being confused between a Lubecore
22 brand and a Groeneveld brand?

23 **A.** You're right. I wasn't there, I wasn't there in any
24 one of these sales. I don't know what happened, I didn't
15:59:52 25 testify about that.

Burke - Cross

1 **Q.** Okay. So if -- do you know what this case is about?

2 **A.** In general but I'm not an engineer, I'm not a
3 lubrication expert. I in general I know, but --

4 **Q.** Give us the general?

16:00:05 5 **A.** The general is that there was a product that
6 lubricates, heavy trucks, big trucks, and it does it
7 automatically, lubricates) and you install this on the truck
8 and don't have to worry about lubricating it again not like
9 the old days I used to get under a car with that lube begun
16:00:24 10 gun.

11 **Q.** Colloquy again what's the case about please?

12 **A.** I understand that somebody took their product, and ran
13 with it.

14 **Q.** So you understand that in order for there to be -- to
16:00:36 15 be any damages here, the sales that Lubecore has made have
16 to be as a result of the alleged infringing activity,
17 correct?

18 **A.** That's not my job.

19 MS. MICHELSON: Objection.

16:00:48 20 THE COURT: Overruled.

21 **Q.** That's not your job?

22 **A.** I am not a cause expert. I am not a fact expert on
23 those matters. I'm a numbers guy, I wasn't there when these
24 things happened. I can't testify about that.

16:01:00 25 **Q.** If there is zero evidence in this case that even one

Burke - Cross

1 of Lubecore's sales was made as a result of confusion
2 between the Lubecore product and the Groeneveld product,
3 assume that, that there's no evidence of that?

4 **A.** If you assume there's no damages, then there's in
16:01:21 5 damages.

6 **Q.** I didn't say assume no damages because your number
7 assumes everything. I'm saying assume that there's in
8 evidence that even one of Lubecore's sales was made as a
9 result of any confusion between Lubecore and Groeneveld. If
16:01:36 10 that's your assumption, what's your damages number?

11 **A.** Probably zero, but that's not my job. I can't measure
12 confusion.

13 **Q.** I didn't ask you to.

14 **A.** I thought you were confusing me.

16:01:50 15 **Q.** Now, all of the figures that you -- with respect to
16 Lubecore, can we have the -- Elmo again. With respect to?

17 **A.** Hard to see that way, counselor.

18 **Q.** I'm trying to show you the numbers.

19 **A.** Hard to see that way. I can't see the number. Thank
20 you.

21 **Q.** This is what's marked as Plaintiff's Exhibit 103,
22 correct?

23 **A.** Yes, sir, down here in the left hand corner, that's
24 what it says.

25 **Q.** And this document serves as the basis for all of the

Burke - Cross

1 sales information that you used with respect to Lubecore,
2 correct?

3 **A.** My document was not labeled that way.

4 **Q.** Is it the same document?

16:02:58 5 **A.** Let me check. Same number of companies.

6 **Q.** I'm sorry?

7 **A.** Where did you go?

8 **Q.** Oh, that's right you need to be able to see that.

9 Sorry about that.

16:03:23 10 **A.** And if you'd move it over a little, please.

11 **Q.** Certainly.

12 **A.** My document is a little different up here at the top
13 of this column right here.

14 **Q.** Oh, yeah, that's -- yeah, we unfortunately just did
16:03:46 15 that ourselves because that was a misprint in the document
16 from the beginning that was supposed to be 2009?

17 **A.** Okay. Otherwise this looks like the document I
18 referenced.

19 **Q.** Okay. So this is the document from which all of your
16:03:59 20 Lubecore sales data comes?

21 MS. MICHELSON: May I see a copy of that,
22 counselor? I haven't seen that.

23 MS. ZUJKOWSKI: I just marked it in pen.

24 MS. MICHELSON: When.

16:04:08 25 MS. ZUJKOWSKI: When I was.

Burke - Cross

1 MR. ANASTOS: When you were sitting there.

2 MS. ZUJKOWSKI: That we had a typo, we
3 testified about with our witness. It wasn't intending to do
4 it. It there's not guilty changed.

16:04:18 5 MS. MICHELSON: Oh, okay.

6 BY MR. ANASTOS:

7 Q. Now, I want you to assume hypothetically speaking that
8 the sales for Lubecore for the years 2009, 2010 and 2011
9 were \$1,548,087.

16:04:51 10 A. Is that the total for the three years.

11 Q. Total -- just assume that number.

12 A. For -- for the three years or for a year?

13 Q. For three years?

14 A. For three years? So that's 2009, 10 and 11. Yes, sir
16:05:06 15 I will assume that.

16 Q. Now you testified before that you first reduced
17 Lubecore's sales by -- or you took 80 percent of it
18 approximately to take away certain distributors that you
19 didn't count in the mix; is that correct?

20 A. Yes, sir.

21 Q. So what's 80 percent times \$1,548,087?

22 A. 80 percent of that is -- I get \$1,238,470 rounding
23 off.

24 Q. Now, would you apply your contribution margin to that
16:05:47 25 number, please?

Burke - Cross

1 A. I will. .3653 of that number is \$452,413.

2 MR. ANASTOS: Thank you very much.

3 THE WITNESS: You're welcome.

4 THE COURT: Any redirect?

16:06:35 5 MS. MICHELSON: No, thank you.

6 THE COURT: Thank you, Doctor. Watch your
7 step going down.

8 THE WITNESS: Thank you, your Honor.

9 THE COURT: You may call your next witness.

16:06:43 10 MS. MICHELSON: Your Honor, we're going to
11 just read to the jury the stipulations that were entered
12 into by the parties in the case.

13 THE COURT: Go ahead.

14 16:06:53 MS. MICHELSON: And then we have a -- a
proffer that we'd like to offer to the court.

16 THE COURT: What do you mean a proffer?

17 MS. MICHELSON: Of a witness, Brendan cane.

18 THE COURT: Oh, all right.

19 MS. MICHELSON: May I proceed?

20 16:07:10 These are stipulations that both parties defense and
plaintiff answered into in this matter. I'm going to just
21 read them to you. Number 1, Groeneveld Transport
22 Efficiency, Inc., Groeneveld Pacific West and Groeneveld
23 Atlantic south, the Groeneveld USA companies are owned by
24 Groeneveld, the USA Holding, Inc. which is in turn is owned
16:07:34 25

Burke - Cross

1 by Groeneveld group BV, B, period, V, period. Groeneveld
2 Group is a Dutch company.

3 3. The Plaintiff in the case in this case is
4 Groeneveld Transport Efficiency, Inc., also known as
16:07:53 5 Groeneveld.

6 4. Groeneveld Group and its affiliates manufacture
7 and distribute automatic lubrication systems -- I might do
8 this over here might be better to read along.

9 I'm actually on Number 4 now. Groeneveld Group and
16:08:26 10 its affiliates manufacture and distribute automatic
11 lubrication system referred to as ALS, automatic greasing
12 systems or greasing systems, and their components supplies
13 and parts.

14 5. Groeneveld Group sells its ALS products worldwide.

16:08:45 15 6. Jan Eissis founded CPL Systems, Canada CBH or CPL
16 Groeneveld in 1988.

17 7. Since its formation in 1988, CPL has been the
18 Canadian distributor of Groeneveld Group's ALS products.

19 8. In 2001, Mr. Eissis sold 80 percent of CPL to
16:09:12 20 Groeneveld Group.

21 9. In 2004, Mr. Eissis sold the remaining 20 percent
22 of CPL to Groeneveld Group.

23 10. CPL is now owned by Groeneveld Group.

24 11. -- oh, thanks. Thanks, Steve.

16:09:33 25 11. Mr. Eissis was president of the CPL from 1988

Burke - Cross

1 until January, 2007.

2 12. In January, 2007, Mr. Eissis' affiliations with
3 Groeneveld ended.

4 13. From 1988 until 2007 CPL sold exclusively
16:09:58 5 Groeneveld groups ALS products.

6 14. Since 2007, CPL has continued to sell exclusively
7 Groeneveld groups ALS products.

8 15. In 2007, Mr. Eissis formed Orlaco Crane Cam, Inc.
9 Orlaco.

16:10:30 10 16. Orlaco changed its name to Lubecore international
11 Lubecore on July 25, 2008.

12 17. Lubecore sells ALS products through a network of
13 distributors.

14 18. Lubecore began to sell its ALS products in Canada
16:10:54 15 in 2008.

16 19. Lubecore began to sell its ALS products in the
17 United States in 2009.

18 20. ALSs are used in a variety of applications,
19 including on over-the-road commercial trucks, sometimes
16:11:16 20 called transport or mobile applications.

21 21. In those applications, an ALS regularly and
22 automatically delivers to specific moving parts of large
23 trucks, trailers, and similar vehicles, grease/lubrication,
24 at preselected time intervals.

16:11:38 25 22. ALSs are also used in, "Off road," applications.

Burke - Cross

1 23. Some ALSs operate by air pressure and are known
2 as pneumatic systems. Some ALSs operate by electricity.

3 24. Groeneveld sells its ALS products for transport
4 applications.

16:12:03 5 25. One product Groeneveld sells for transport
6 applications is an automatic single-line zero grease
7 lubrication system known as its EP-0 system or EP-0 product.
8 The quote zero closed quote refers to the viscosity or
9 density of the grease.

16:12:24 10 26. A, "Zero grease is thinner than a Number 1 grease
11 which in turn is thinner than a Number 2 grease.

12 27. Groeneveld EP-0 system has been sold in the
13 United States since its creation by Groeneveld Group in
14 1980.

16:12:45 15 28. Lubecore sells its ALS products through its
16 network of distributors for transport applications.

17 29. One product that Lubecore sells for transport
18 applications is an automatic single-line zero grease
19 lubrication system.

16:13:07 20 30. Groeneveld conducts its business in the United
21 States and interstate commerce.

22 31. Lubecore conducts its business in the United
23 States and interstate commerce.

24 32. Groeneveld has sold its EP-0 system in interstate
16:13:23 25 commerce in the United States since 1980.

Burke - Cross

1 33. Lubecore has sold its EP-0 system in interstate
2 commerce in the United States since 2009.

3 34. Lubecore and Groeneveld attend many of the same
4 trade shows.

16:13:41 5 35. Lubecore and Groeneveld are direct competitors in
6 the ALS business. Those are the stipulations, your Honor,
7 that and jurors that the parties agreed are established
8 facts in this case.

9 THE COURT: Thank you.

16:13:54 10 MS. MICHELSON: Uncontested.

11 THE COURT: That means folks you know I told
12 you probably don't remember but when we first started one
13 way you get evidence is by way of stipulation. That means
14 the parties agree that certain fact or facts are true. You
16:14:05 15 may accept those facts and no other evidence is necessary on
16 that point. It's up to you to decide.

17 Okay. Is there anything further?

18 MS. MICHELSON: Your Honor, our -- of course
19 the request for Brendon Cane as we discussed. We can handle
20 that how you like and other than that, we are prepared --

21 THE COURT: Are you reading off your hand.

22 MS. MICHELSON: I -- you see how I lost those
23 other notes. I was so afraid I was going to lose another
24 piece.

16:14:32 25 THE COURT: You and Sara Palin.

Burke - Cross

1 MS. MICHELSON: Does she do that too.

2 THE COURT: I guess that's what they say.

3 MS. MICHELSON: I don't put the easy stuff on
4 my hand. The hard stuff is -- we are prepared to rest our
16:14:43 5 case, subject to moving our exhibits into evidence and we
6 can do that at the course.

7 THE COURT: Thank you. That means you've
8 heard all the testimony that will be offered on behalf of
9 the Plaintiff in their case-in-chief.

10 Generally, there's a mandatory recess at this time but
11 because of the late hour, we'll go ahead and proceed and see
12 if the defense has anything to offer and we'll do the legal
13 and exhibit materials out of your hearing tomorrow morning
14 before we start.

16:15:10 15 So without waiving anything.

16 RIGHT1: Without prejudice to Rule 50 motion.

17 THE COURT: Without prejudice to anything,
18 even Melissa. Is there anything you'd like to tell Melissa
19 don't have a hard attack.

20 MR. ANASTOS: She is.

21 THE COURT: I know she is.

22 THE COURT: Call your first witness.

23 MR. ANASTOS: It's a videotape.

24 THE COURT: Makes it easy.

16:15:35 25 MR. ANASTOS: Our first witness is Mr. Martin

Burke - Cross

1 Vermeulen by videotape trial deposition, Mr. Vermeulen in
2 Korea. I hope you can -- I hope you can follow it. As good
3 as we could possibly do.

4 MS. MICHELSON: And just for the record we
16:15:51 5 reassert our objection to the Mr. Vermeulen.

6 THE COURT: Okay. It's overruled. How long
7 is this?

8 MR. ANASTOS: A couple hours.

9 THE COURT: Okay. We'll go until about 5:00
16:16:04 10 and then we'll stop. Chris, you'll let me know.

11 THE CLERK: All right. Five to 5:00.

12 (Videotape of Martin Vermeulen played.)

13 THE COURT: Can would he stop here? Okay,
14 folks, we'll stop for the day. Again, you haven't heard
16:49:40 15 everything so keep in mind the admonition. It's important
16 and even though you may have heard a lot of the testimony,
17 you don't know what the law is that applies in the case.
18 Believe me it's important that you keep an open mind. Do
19 not form or express any opinion or answer to what you think
16:49:55 20 your ultimate decision is going to be until everything is
21 submitted to you. Have a good night and see you same time
22 same place, 8:15, L-1.

23 (Proceedings in the absence of the jury:)

24 THE COURT: A couple things. One is I'll meet
16:50:35 25 you all here 8:00 tomorrow morning. If I expect you to go

Burke - Cross

1 overt exhibits tonight or before tomorrow morning, however
2 you do it and any exhibit that you object to, I'll address.
3 If there's in objection, I don't need to address it. You
4 understand that, Melissa.

16:50:53 5 MR. ANASTOS:

6 MS. ZUJKOWSKI: I do.

7 THE COURT: What did I say.

8 MS. ZUJKOWSKI: If there's no objection you
9 don't need us to express that.

16:50:58 10 MR. ANASTOS: 8:00, right.

11 THE COURT: Right, right. Okay. And then you
12 want to talk about Brendon Cane go ahead. Have a seat.

13 MS. MICHELSON: Thank you, your Honor.

14 Yes, especially in light of the cross-examination of
15 Ms. Wilson concerning activity of the companies overseas, it
16 had -- our position is that defense has opened the door as
17 to competitive activities and occurrences overseas as well.
18 And I believe that was the basis for the -- at least as I
19 heard it for the Court's rulings. We also in addition to
20 that, we would like to proffer and make a part of the record
21 his transcript, in the event that you decline to change your
22 mind on that and let us play Brendon Cane, we do want to
23 make a proffer on the record of the transcript and the video
24 of his testimony and we have actually marked it as an
25 exhibit, and.

Burke - Cross

1 THE COURT: You can do that.

2 MS. MICHELSON: Just so there's a record of
3 it. And we have provided opposing counsel with a copy as
4 well. We've marked it PX-142-1 through -- well it's the
16:52:23 5 entirety of the trial transcript of the deposition that we
6 took along with the disk itself which is 142.

7 THE COURT: Okay.

8 MR. ANASTOS: Your Honor, we on today
9 Mr. Cane's testimony on two grounds. One was that there's
16:52:36 10 nothing in it that identifies the pumps he was talking about
11 and between the Groeneveld and Lubecore pumps we don't know
12 which one that proven already Lubecore makes separate pumps.
13 Secondly and perhaps more importantly is the issue that this
14 Court's jurisdiction is does not extend outside the United
16:52:53 15 States foreign company, CPL is a Canadian company -- excuse
16 me lube-S a Canadian company could certainly be enjoined
17 from certain practice in the United States if the Court so
18 desires, but the testimony of someone outside the United
19 States in territory where this Court did not enjoin Lubecore
16:53:12 20 from doing anything is totally irrelevant as a matter of
21 law.

22 Secondly, we do did not open the door to overseas
23 testimony with are our examination with Ms. Wilson. We
24 intending to -- to continue that line a little bit tomorrow.
16:53:27 25 The fact that the Plaintiff has registered the Lubecore name

Burke - Cross

1 overseas goes to our unclean hands defense. They're asking
2 for preliminary injunction, doesn't go to confusion.

3 THE COURT: Permanent.

4 MR. ANASTOS: Permanent at this point it goes
16:53:44 5 to unclean hands on the part of Plaintiff.

6 MS. MICHELSON:

7 THE COURT: Here we don't need to hear
8 anything.

9 As I read cane's testimony, he said that the pumps
16:53:53 10 looked alike. I mean you can say that right now.

11 MR. ANASTOS: We didn't say what pumps.

12 THE COURT: Know didn't. That's the other
13 part of it, but the relevance of his testimony is -- I don't
14 see it. He said the pumps look alike he never identified
16:54:07 15 the pumps that are in question in this case, so.

16 MS. MICHELSON: Well, your Honor, I believe we
17 submit additional materials on that and I won't repeat --
18 really.

19 THE COURT: You don't have to you got it, you
16:54:18 20 have your proffer.

21 MS. MICHELSON: Right, anything I said in the
22 objections, but the fact that counsel just said that they
23 have this unclean hands defense that includes activity
24 overseas, I think that strengthens and corroborates the
16:54:33 25 argument that activity overseas is indeed relevant here, and

Burke - Cross

1 the reason we're --

2 THE COURT: Okay, but you didn't listen to me.
3 I said I read his testimony, and he said that the pumps
4 looked the same. Okay, we already know that. So that's --
16:54:48 5 redundant, and then Number 2, he didn't identify which pumps
he was talking about. So there's nothing to do with
6 overseas.
7

8 MS. MICHELSON: Well, your Honor, there was
9 additional evidence submitted to the Court and I -- I'm not
16:55:02 10 going to repeat it for you because it is part of the record
11 and we did submit test a part of our response to their
12 objections and we are prepared to offer certified records of
13 that as well to accompany his testimony concerning the
14 specific products that he was.

16:55:19 15 THE COURT: Right, but you wanted to
16 supplement the deposition because -- in your response to the
17 motion in limine you said they didn't ask the right
18 question, we can supplement that and correct it. It's too
19 late. All right. See you in the morning.

20 MS. MICHELSON: Thank you.

21 (Proceedings adjourned at 4:55 p.m.)

22

23

24

25

1	DIRECT EXAMINATION OF GAIL WILSON	504
2	CROSS-EXAMINATION OF GAIL WILSON	543
3	REDIRECT EXAMINATION OF GAIL WILSON	592
4	RECROSS-EXAMINATION OF GAIL WILSON	612
5	DIRECT EXAMINATION OF JOHN BURKE	617
6	CROSS-EXAMINATION OF JOHN BURKE	650
7		
8		C E R T I F I C A T E
9	I certify that the foregoing is a correct	
10	transcript from the record of proceedings in the	
11	above-entitled matter.	
12		
13		
14		
15	s/Shirle Perkins	
16	<u>Shirle M. Perkins, RDR, CRR</u>	
17	U.S. District Court - Room 7-189	
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C E R T I F I C A T E

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transcript from the record of proceedings in the
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